MONTANA LEGISLATIVE HISTORY

Chapter 800 1991

Bill H _____ S 51 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)		C	Hearing Date(s)		C
	3/8	✓C		1/15	✓C
	3/19	✓C		2/4	✓C
		C			C
Date Out	3/26	✓C	out	2/4	✓

Did this bill originate in an interim committee? ___Yes X No

Committee _____ Report _____

Note! A conference committee and a free conference committee were appointed. Their minutes were not recorded.

1/03	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/04	FISCAL NOTE REQUESTED		
1/07	FIRST READING		
1/10	FISCAL NOTE RECEIVED		
1/11	FISCAL NOTE PRINTED		
1/15	HEARING		
1/18	TABLED IN COMMITTEE		

SB 51 INTRODUCED BY VAN VALKENBURG
REVISE CRIMINAL PROCEDURE

1/03	INTRODUCED		
1/07	REFERRED TO JUDICIARY		
1/07	FIRST READING		
1/07	FISCAL NOTE REQUESTED		
1/14	FISCAL NOTE RECEIVED		
1/15	HEARING		
1/15	FISCAL NOTE PRINTED		
2/02	REVISED FISCAL NOTE REQUESTED		
2/05	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/06	REVISED FISCAL NOTE RECEIVED		
2/07	REVISED FISCAL NOTE PRINTED		
2/08	2ND READING PASSED AS AMENDED	46	0
2/09	3RD READING PASSED	47	0
	TRANSMITTED TO HOUSE		
2/11	FIRST READING		
2/11	REFERRED TO JUDICIARY		
3/08	HEARING		
3/26	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/05	2ND READING CONCURRED	91	8
4/06	3RD READING CONCURRED	92	4
	RETURNED TO SENATE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS NOT CONCURRED	45	0
4/16	CONFERENCE COMMITTEE APPOINTED		
4/23	CONFERENCE COMMITTEE DISSOLVED		
4/23	FREE CONFERENCE COMMITTEE APPOINTED		
4/24	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/25	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
4/25	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
	HOUSE		
4/18	CONFERENCE COMMITTEE APPOINTED		
4/24	CONFERENCE COMMITTEE DISSOLVED		
4/24	FREE CONFERENCE COMMITTEE APPOINTED		
4/24	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/25	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	91	6
4/25	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	92	7
5/03	SIGNED BY PRESIDENT		
5/03	SIGNED BY SPEAKER		
5/03	TRANSMITTED TO GOVERNOR		
5/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 800	EFFECTIVE DATE: 10/01/91	

SB 52 INTRODUCED BY GAGE
ALLOW COOPERATIVE TO USE UNCLAIMED REFUNDS FOR COLLEGE SCHOLARSHIPS

1/02	INTRODUCED
1/07	REFERRED TO TAXATION
1/07	FIRST READING

SENATE BILL NO. 51

INTRODUCED BY VAN VALKENBURG

IN THE SENATE

JANUARY 5, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 7, 1991	FIRST READING.
FEBRUARY 5, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 6, 1991	PRINTING REPORT.
FEBRUARY 7, 1991	ON MOTION, CONSIDERATION PASSED FOR THIS LEGISLATIVE DAY
FEBRUARY 8, 1991	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 9, 1991	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 47; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 11, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 26, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
APRIL 5, 1991	SECOND READING, CONCURRED IN.
APRIL 6, 1991	THIRD READING, CONCURRED IN. AYES, 92; NOES, 4.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 6, 1991	RECEIVED FROM HOUSE.
APRIL 9, 1991	SECOND READING, AMENDMENTS NOT

CONCURRED IN.

APRIL 9, 1991 — ON MOTION, CONFERENCE COMMITTEE REQUESTED.

APRIL 16, 1991 — CONFERENCE COMMITTEE APPOINTED.

IN THE HOUSE

APRIL 18, 1991 — ON MOTION, CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 23, 1991 — ON MOTION, CONFERENCE COMMITTEE DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 24, 1991 — ON MOTION, CONFERENCE COMMITTEE DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 24, 1991 — FREE CONFERENCE COMMITTEE REPORTED.

APRIL 25, 1991 — SECOND READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 25, 1991 — FREE CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 25, 1991 — SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. 51

INTRODUCED BY VAN VALKENBURG

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO CRIMINAL PROCEDURE; AMENDING SECTIONS 46-3-101, 46-3-102, 46-3-104, 46-3-105, 46-3-106, 46-4-101, 46-4-102, 46-4-103, 46-4-104, 46-4-201, 46-4-202, 46-4-203, 46-4-204, 46-4-205, 46-4-206, 46-4-301, 46-4-302, 46-4-303, 46-4-304, 46-4-305, 46-6-404, 46-6-302, 46-6-303, 46-6-304, 46-6-401, 46-6-202, 46-6-203, 46-6-106, 46-6-104, 46-6-105, 46-6-421, 46-6-403, 46-6-402, 46-6-411, 46-6-502, 46-5-401, 46-5-402, 46-5-502, 46-5-101, 46-5-103, 46-5-202, 46-5-203, 46-5-205, 46-5-206, 46-5-208, 46-5-209, 46-5-301, 46-5-207, 46-5-204, 46-5-303, 46-5-304, 46-5-305, 46-8-101, 46-8-102, 46-8-103, 46-8-111, 46-8-113, 46-8-114, 46-8-115, 46-8-201, 46-9-103, 46-9-501, 46-9-202, 46-9-302, 46-9-401, 46-9-403, 46-9-412, 46-9-414, 46-9-503, 46-9-205, 46-9-504, 46-7-101, 46-7-102, 46-7-103, 46-10-102, 46-10-202, 46-10-203, 46-10-204, 46-11-101, 46-11-102, 46-11-201, 46-11-403, 46-11-203, 46-11-301, 46-11-302, 46-11-303, 46-11-311, 46-11-313, 46-11-314, 46-11-315, 46-11-316, 46-11-317, 46-11-318, 46-11-319, 46-11-331, 46-11-332, 46-11-401, 46-11-404, 46-11-502, 46-11-503, 46-11-504, 46-11-505, 46-12-102, 46-12-201, 46-12-204, 46-12-202, 46-12-206, 46-15-322, 46-15-323, 46-15-324, 46-15-325, 46-15-327, 46-15-328, 46-15-329, 46-15-331, 46-15-201, 46-15-202, 46-15-204, 46-14-101, 46-14-102, 46-14-103, 46-14-202, 46-14-212, 46-14-203, 46-14-213, 46-14-201, 46-14-401, 46-14-221, 46-14-222, 46-14-301, 46-14-302, 46-14-303, 46-14-304, 46-14-311, 46-14-312, 46-14-313, 46-13-101, 46-13-104, 46-18-503, 46-13-302, 46-13-301, 46-13-203, 46-13-201, 46-13-106, 46-15-101, 46-15-102, 46-15-112, 46-15-113, 46-15-103, 46-15-104, 46-15-114, 46-16-102, 46-16-301, 46-16-302, 46-16-303, 46-16-304, 46-16-305, 46-16-307, 46-16-201, 46-16-601, 46-16-212, 46-16-213, 46-16-401, 46-16-402, 46-16-403, 46-16-501, 46-16-502, 46-16-503, 46-16-504, 46-16-505, 46-16-603, 46-16-605, 46-16-701, 46-16-702, 46-17-201, 46-17-202, 46-17-311, 46-18-111, 46-18-112, 46-18-113, 46-18-203, 46-21-101, 46-21-102, 46-21-103, 46-21-104, 46-21-105, 46-21-201, 46-21-202, 46-21-203, 46-22-101, 46-22-102, 46-22-201, 46-22-202, 46-22-203, 46-22-204, 46-22-205, 46-22-206, 46-22-301, 46-22-302, 46-22-303, 46-22-304, 46-22-305, 46-22-306, 46-22-307, 1-1-202, 1-1-207, 7-16-2322, 7-32-201, 7-32-233, 7-32-4303, 16-11-147, 37-60-406, 44-11-303, 45-5-206, 45-8-209, 46-4-306, 46-10-201, 46-15-326, AND 46-16-103, MCA; AND REPEALING SECTIONS 46-1-101, 46-1-102, 46-1-201, 46-3-103, 46-3-201, 46-3-202, 46-3-203, 46-3-204, 46-3-205, 46-3-206, 46-5-104, 46-5-201, 46-5-302, 46-5-501, 46-5-503, 46-5-504, 46-5-505, 46-6-101, 46-6-103, 46-6-301,

INTRODUCED BILL
SB 51

46-6-501, 46-6-503, 46-8-112, 46-9-101, 46-9-204, 46-9-303, 46-9-404, 46-9-411, 46-9-413, 46-10-101, 46-11-202, 46-11-204, 46-11-312, 46-11-333, 46-11-402, 46-11-501, 46-12-101, 46-12-103, 46-13-102, 46-13-103, 46-13-105, 46-15-111, 46-15-203, 46-15-321, 46-15-401, AND 46-16-108, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Scope -- purpose -- construction. (1) This title governs the practice and procedure in all criminal proceedings in the courts of Montana except where provision for a different procedure is specifically provided by law.

(2) This title is intended to provide for the just determination of every criminal proceeding. The purposes of this title are to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay.

(3) Any irregularity in a proceeding specified by this title that does not affect the substantial rights of the accused must be disregarded.

NEW SECTION. **Section 2.** Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Arraignment" means the formal act of calling the

defendant into open court to enter a plea answering a charge.

(2) "Arrest" means taking a person into custody in the manner authorized by law.

(3) "Arrest warrant" means a written order from a court directed to a peace officer or to some other person specifically named commanding that officer or person to arrest another. The term includes the original warrant of arrest and a copy certified by the issuing court.

(4) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant in a pending criminal proceeding.

(5) "Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

(6) "Concealment" means any act or deception done purposely or knowingly upon or outside the premises of a wholesale or retail store or other mercantile establishment with the intent to deprive the merchant of all or part of the value of the merchandise.

(7) "Conviction" means a judgment or sentence entered upon a guilty plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a

jury.

(8) "Court" means a place where justice is judicially administered and includes the judge of the court.

(9) "Included offense" means an offense that:

(a) is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged; or

(c) differs from the offense charged only in the respect that a less serious injury or risk to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

(10) "Judge" means a person who is vested by law with the power to perform judicial functions.

(11) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

(12) "Make available for examination and reproduction" means to make material and information that is subject to disclosure available upon request at a designated place during specified reasonable times and to provide suitable facilities or arrangements for reproducing it. The term does

not mean that the disclosing party is required to make copies at its expense, to deliver the materials or information to the other party, or to supply the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make other or additional arrangements.

(13) "New trial" means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

(14) "Notice to appear" means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

(15) "Offense" means a violation of any penal statute of this state or any ordinance of its political subdivisions.

(16) "Parole" means the release to the community of a prisoner by a decision of the board of pardons prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and the supervision of the department of institutions.

(17) "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person's authority.

(18) "Persistent felony offender" means an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

(b) less than 5 years have elapsed between the commission of the present offense and either:

(i) the previous felony conviction; or

(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and

(c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at the postconviction hearing.

(19) "Place of trial" means the geographical location and political subdivision in which the court that will hear the cause is situated.

(20) "Preliminary examination" means a hearing before a judge for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

(21) "Probation" means release by the court without imprisonment of a defendant found guilty of a crime. The release is subject to the supervision of the department of institutions upon direction of the court.

(22) "Prosecutor" means an elected or appointed attorney who is vested by law with the power to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

(23) "Same transaction" means conduct consisting of a series of acts or omissions that are motivated by:

(a) a purpose to accomplish a criminal objective and that are necessary or incidental to the accomplishment of that objective; or

(b) a common purpose or plan that results in the repeated commission of the same offense or effect upon the same person or the property of the same person.

(24) "Search warrant" means an order that is:

(a) in writing;

(b) in the name of the state;

(c) signed by a judge;

(d) a particular description of the place, object, or person to be searched and the evidence, contraband, or person to be seized; and

(e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or persons.

(25) "Sentence" means the judicial disposition of a criminal proceeding upon a plea, verdict, or finding of guilty.

(26) "Statement" means:

(a) a writing signed or otherwise adopted or approved by a person;

(b) a video or audio recording of a person's communications or a transcript of the communications; and

(c) a writing containing a summary of a person's oral communications or admissions.

(27) "Summons" means a written order issued by the court that commands a person to appear before a court at a stated time and place to answer a charge for the offense set forth in the order.

(28) "Superseded notes" means handwritten notes, including field notes, that have been substantially incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure except as provided in 46-15-324.

(29) "Temporary road block" means any structure, device, or means used by a peace officer for the purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

(30) "Witness" means a person whose testimony is desired in a proceeding or investigation by a grand jury or in a

criminal action, prosecution, or proceeding.

(31) "Work product" means legal research, records, correspondence, reports, and memoranda, both written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense counsel, or their staff or investigators.

NEW SECTION. **Section 3.** Filing the charge. In all criminal prosecutions, the charge must be filed in the county where the offense was committed unless otherwise provided by law.

Section 4. Section 46-3-101, MCA, is amended to read:

"46-3-101. Place of trial ~~---change-of--venue. (1) In all--criminal-prosecutions-the~~ The place of trial ~~shall~~ must be in the county where the ~~offense-was-committed~~ charge is filed unless otherwise provided by law.

(2) All objections ~~to--improper-place-of-trial~~ that a charge is filed in the improper county are waived by a defendant unless made before trial. If an objection is made, a hearing ~~shall~~ must be held and the venue proper county in which to file the charge must be established before ~~proceeding-to-trial~~ further proceedings may take place."

Section 5. Section 46-3-102, MCA, is amended to read:

"46-3-102. ~~When--offense--committed--partly--in on--and partly-in another county~~ Requisite act in multiple counties. (1) When two or more acts are requisite to the commission of

any an offense or when two or more acts or--offenses are committed in furtherance of a common scheme, the trial charge may be filed in any county in which any of such the acts or offenses occur occurred.

(2) When an act requisite to the commission of an offense occurs or continues in more than one county, the charge may be filed in any county in which the act occurred or continued."

Section 6. Section 46-3-104, MCA, is amended to read:

"46-3-104. When-a-person-commits-or-aids-and--abets--an offense--in--another--county Assisting in commission of or committing an offense. Where When a person in one county commits an offense or, aids, abets, or procures the commission of an offense in another county, the offender charge may be tried filed in either county."

Section 7. Section 46-3-105, MCA, is amended to read:

"46-3-105. Offenses--committed--while-in-transit County of offense unknown. (1) If the county in which the offense was committed cannot be readily determined, the offender may be charged in any county in which it appears that an element of the offense occurred.

(2) If When an offense is committed in, on, or against any-instrument-of a public or private conveyance passing within--this--state and it cannot-readily be-determined is doubtful in which county the offense was-committed occurred,

the offender charge may be tried filed in any county in or through which such-instrument-of the conveyance has passed or-in-the-county-where-the-travel-terminates traveled."

Section 8. Section 46-3-106, MCA, is amended to read:

"46-3-106. Offense commenced-outside consummated within the state. If the-commission-of an offense commenced-outside the state-is-consummated is committed partly within this state, the offender-shall-be-tried offense may be charged in the any county where an act requisite to the commission of the offense was-consummated is committed or continued."

Section 9. Section 46-4-101, MCA, is amended to read:

"46-4-101. Jurisdiction -- death and cause of death in different counties. When death occurs as a direct result of acts or events which that occurred in another county, the coroner of either county shall-have has jurisdiction. If a conflict of jurisdiction should arise or should said coroners either coroner fail to act, the coroner of the county where the death occurred shall-have has the primary jurisdiction."

Section 10. Section 46-4-102, MCA, is amended to read:

"46-4-102. Investigation of suspicious deaths. (1) Whenever a coroner is informed that a death was caused by other than natural causes or that a death has occurred under circumstances such as to that afford a reasonable ground to suspect that the death is the result of criminal conduct or

when no physician or surgeon licensed in the state of Montana will sign a death certificate, the coroner shall ~~make-an-investigation-thereof~~ investigate the death.

(2) It ~~shall--be~~ is the duty of every person acquiring knowledge of ~~such~~ a death to immediately report the ~~same forthwith~~ death to the coroner of the county in which the death apparently occurred.

(3) In cases where criminal conduct is suspected, the coroner shall notify the state medical examiner and ~~one-or more~~ a law enforcement ~~agencies~~ agency having jurisdiction. The law enforcement ~~agencies-so~~ agency notified shall have ~~the-responsibility-to~~ investigate the case."

Section 11. Section 46-4-103, MCA, is amended to read:

"46-4-103. Autopsy -- when conducted, record, scope. (1) If in the opinion of the coroner an autopsy is advisable, ~~he~~ the coroner shall order one and shall retain a medical examiner to perform it. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. In ordering an autopsy, the coroner shall order the body to be exhumed if it has been interred.

(2) A full record of the facts found ~~shall~~ must be made on a form in triplicate provided by the division of forensic science ~~in-triplicate,-the~~. The coroner and medical examiner ~~retaining~~ shall each retain one copy and ~~delivering~~ shall

deliver the other copy to the county attorney.

(3) The right to conduct an autopsy ~~shall-include~~ includes the right to retain ~~such~~ specimens ~~as~~ that the medical examiner performing the autopsy ~~deems~~ considers necessary.

(4) The state of Montana shall pay any expenses incurred whenever an autopsy ~~or-investigation-is-initiated-at-the-request-of-the-state--medical--examiner--or--attorney~~ general is ordered as provided in this part. ~~The-county-shall-pay-any--expenses--incurred--whenever--an--autopsy--or-investigation--is--initiated--at--the--request-of-the-county-attorney-or-county-coroner.~~"

Section 12. Section 46-4-104, MCA, is amended to read:

"46-4-104. Liability of a mortuary or physician. ~~No person--or--firm--owning--a~~ A mortuary owner or ~~any~~ person employed in ~~such~~ a mortuary ~~shall-be~~ is not liable for the acts of the coroner performed in the removal of ~~any~~ a body to a mortuary or during the course of an autopsy on ~~such~~ that body. No criminal or civil action ~~shall~~ may arise against a licensed physician for performing an autopsy authorized by this chapter or for performing an autopsy on request of a federal officer investigating a death within a federal jurisdiction."

Section 13. Section 46-4-201, MCA, is amended to read:

"46-4-201. Inquest -- definition; when held; -- how

conducted. ~~(1) An inquest is a formal inquiry into the causes of and circumstances surrounding the death of any person.~~

~~(2)~~ The coroner shall hold an inquest only if requested to do so by the county attorney ~~of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred~~. However, when the death of ~~any~~ a person occurs in a jail or penal institution or is caused ~~from the use of a firearm~~ by a peace officer, except where criminal charges have been or will be filed, the county attorney shall direct the coroner to hold an inquest.

~~(3)~~(2) If an inquest is held, the proceedings ~~shall~~ must be public. The coroner shall conduct the inquest with the aid and assistance of the county attorney. ~~Such~~ The inquest ~~is to~~ must be held in accordance with this ~~part~~ section.

~~(4)~~(3) (a) A coroner who also serves as a peace officer may not conduct an inquest into the death of a person who:

(i) died in a jail or penal institution;

(ii) died while in the custody of a peace officer; or

(iii) was killed by a peace officer.

(b) If a coroner is disqualified under subsection ~~(4)(a)~~ (3)(a), the county attorney shall request a qualified coroner of a neighboring county to conduct the inquest. The

expenses of a coroner fulfilling the request~~, including salary,~~ must be paid by the requesting county."

Section 14. Section 46-4-202, MCA, is amended to read:

"46-4-202. Summoning and swearing in of jurors -- instructions. (1) For holding ~~such~~ an inquest, the coroner ~~must~~ shall summon a jury of not less than three or more than nine persons qualified by law to serve as jurors.

(2) ~~When six or more of the~~ The jurors ~~attend, they~~ chosen to serve must be sworn by the coroner to inquire who the person was and when, where, and by what means ~~he~~ the person came to ~~his~~ death and to inquire into the circumstances attending ~~his~~ the person's death and ~~to~~ render a true verdict thereon, according to the evidence offered ~~to them or arising from the inspection of the body~~.

(3) The jurors may be required to inspect the body of the decedent, whether or not an autopsy has been performed, at the discretion of the county attorney.

~~(3)~~(4) The coroner ~~must~~ shall instruct the jurors as to their duties."

Section 15. Section 46-4-203, MCA, is amended to read:

"46-4-203. ~~Subpoenaing of witnesses~~ Coroner's subpoena. A Upon the request of the county attorney, a coroner ~~may~~ shall issue subpoenas for witnesses, returnable immediately or at ~~such~~ a time and place as he the coroner may designate, which that may be served by any competent person. ~~He shall~~

summon--and--examine--as--a--witness-each-person-who,-in-his opinion-or-that-of-the-jury,-has-any-knowledge-of-the--facts and--may--summon--a-surgeon-or-physician-to-inspect-the-body and-give-a-professional-opinion--as--to--the--cause--of--the death."

Section 16. Section 46-4-204, MCA, is amended to read:

"46-4-204. Witness compelled to attend -- examination. (1) A witness served with a subpoena may be compelled to attend and testify or be punished in the same manner as upon for failure to answer a subpoena issued by a justice of the peace.

(2) The coroner-shall-and-the county attorney may shall examine each witness, after which the witness may be examined by the coroner and the jurors."

Section 17. Section 46-4-205, MCA, is amended to read:

"46-4-205. Verdict-of-jury-----form Form of verdict. After inspecting the body, if required, and hearing the testimony, the jury must shall render its verdict, which shall must be by majority vote, and shall certify the same in writing signed by them each juror and setting forth who the deceased person is,-when,-where,-and-by-what-means-he came-to his was and the location, time, circumstances, and means of the death,--and--if--he--was-killed-or-his-death occasioned-by-the-act-of--another--by--criminal--means,--who committed-the-act."

Section 18. Section 46-4-206, MCA, is amended to read:

"46-4-206. Recording and filing of testimony and proceedings. The testimony of the witnesses examined before the coroner's jury must be reduced-to-writing-by-the-coroner or---under---his---direction---and--forthwith recorded and transcribed, the transcript of which must be filed by--him with the--inquisition--in--the--office--of the clerk of the district court of the county. The coroner--must--order--the inquest--proceedings-recorded-and-transcribed-by-a-qualified stenographer.--Such recording and transcribing expenses shall must be paid by the county upon claims duly rendered and certified to by the coroner in the same manner as other claims against the county are paid."

Section 19. Section 46-4-301, MCA, is amended to read:

"46-4-301. Issuance of subpoena. Whenever the--attorney general--or--a--county--attorney a prosecutor has a duty to investigate alleged unlawful activity, any justice of the supreme court or district court judge of this state may cause subpoenas to be issued commanding the persons to whom they are directed to appear before the attorney-general-or the--county--attorney prosecutor and give testimony and produce such books, records, papers, documents, and other objects as may be necessary and proper to the investigation. A subpoena may issue be issued only when it appears upon the affidavit of the attorney--general-or-the-county-attorney

prosecutor that the administration of justice requires it to be issued."

Section 20. Section 46-4-302, MCA, is amended to read:

"46-4-302. Penalty for failure to appear or obey. (1) A person who, without just cause, fails to obey a subpoena served ~~on him~~ under this part is punishable for contempt of court.

(2) (a) A person who, after being granted immunity under 46-4-305, refuses to give testimony or produce evidence under this part must be brought without unnecessary delay before the judge issuing the subpoena or, in that judge's absence or inability to act, before the nearest or most accessible judge, who shall inform the person:

(i) of the contents and requirements of the subpoena;

(ii) that ~~he~~ the person has been granted immunity and may not be excused from testifying or producing evidence on the grounds that ~~his~~ the testimony may incriminate ~~him~~ the person; and

(iii) that a refusal to testify or produce evidence as commanded in the subpoena is punishable as a contempt of court under Title 3, chapter 1, part 5.

(b) In the presence of the judge, the person must be examined by the ~~county attorney~~ prosecutor or produce evidence as commanded in the subpoena.

(c) A refusal to testify or produce evidence may be

punished as a contempt under Title 3, chapter 1, part 5."

Section 21. Section 46-4-303, MCA, is amended to read:

"46-4-303. Relief from improper subpoena. A person aggrieved by a subpoena issued pursuant to this part may, within a reasonable time, file a motion to dismiss the subpoena and, in the case of a subpoena duces tecum, to limit its scope. The motion ~~shall~~ must be granted if the subpoena was improperly issued or, in the case of a subpoena duces tecum, if it is overly broad in its scope."

Section 22. Section 46-4-304, MCA, is amended to read:

"46-4-304. Conduct of investigative inquiry. (1) The ~~attorney general or the county attorney~~ prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony ~~shall~~ must be recorded. The witness has the right to have counsel present at all times. If ~~he~~ the witness does not have funds to obtain counsel, the judge or justice shall appoint counsel ~~for him~~.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part."

Section 23. Section 46-4-305, MCA, is amended to read:

"**46-4-305. Self-incrimination and -- immunity.** (1) No person subpoenaed to give testimony pursuant to this part may be required to make ~~any~~ a statement or to produce ~~any~~ evidence ~~which~~ that may ~~incriminate--him~~ be personally incriminating.

(2) The ~~attorney---general--or--the--county--attorney~~ prosecutor may, with the approval of the ~~justice--or~~ judge who authorized the issuance of the subpoena ~~on-behalf-of-the state~~, grant ~~any~~ a person subpoenaed immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from ~~such~~ the testimony or evidence against that person in ~~any~~ a criminal prosecution.

(3) Nothing in this ~~section~~ part prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in ~~his~~ the prosecutor's sole discretion, that the ~~ends~~ best interest of justice would be served ~~thereby~~ by granting immunity.

(4) After being granted immunity, no person may be excused from testifying on the grounds that ~~his~~ the testimony may ~~incriminate-him~~ be personally incriminating. ~~The--immunity~~ Immunity may not extend to prosecution or punishment for false statements given pursuant to the

subpoena.

~~(2)~~(5) Nothing in this part requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law."

Section 24. Section 46-6-404, MCA, is amended to read:

"**46-6-404. Notice to appear.** (1) Whenever a peace officer is authorized to arrest a person without a warrant, ~~he~~ the officer may instead issue ~~to-such~~ the person a notice to appear.

(2) The notice ~~shall~~ must:

(a) be in writing;

(b) state the ~~name-of-the-person-and-his~~ person's name and address, if known;

(c) set forth the nature of the offense;

(d) be signed by the issuing officer ~~issuing--the~~ notice; and

(e) direct the person to appear before a court at a certain time and place.

(3) Upon failure of the person to appear, a summons or arrest warrant ~~of-arrest~~ may ~~issue~~ be issued."

Section 25. Section 46-6-302, MCA, is amended to read:

"**46-6-302. Form and content of summons.** (1) When authorized to issue an arrest warrant, a court may instead issue a summons.

(2) A summons may be served personally or by

first-class mail.

(3) The summons ~~shall~~ must:

~~(1)~~(a) be in writing in the name of the state of Montana or in the name of the municipality if the violation of a municipal ordinance is charged;

~~(2)~~(b) state the name of the person summoned and ~~his~~ that person's address, if known;

~~(3)~~(c) set forth the nature of the offense;

~~(4)~~(d) state the date when issued and the municipality or county where issued;

~~(5)~~(e) be signed by the judge of the court with the title of ~~his~~ office noted; and

~~(6)~~(f) command the person to appear before a court at a certain time and place.

(4) The summons must plainly state that, upon failure to appear following the service of summons, an arrest warrant must be issued immediately or, if the service is made to a corporation, that a plea of not guilty will be entered."

Section 26. Section 46-6-303, MCA, is amended to read:

"46-6-303. ~~When-warrant-issued-after~~ Failure to appear following summons or notice to appear. ~~Upon-failure-of-the-person-summoned-to-appear,--the--magistrate--shall--issue--a-warrant--of--arrest.~~ If, after ~~issuing~~ the issuance of a summons or notice to appear, the ~~magistrate~~ judge becomes

satisfied that the person ~~summoned~~ has not appeared or will not appear as commanded ~~by-the-summons,~~ he the judge may at once issue ~~a-warrant-of~~ an arrest warrant."

Section 27. Section 46-6-304, MCA, is amended to read:

"46-6-304. Summons to a corporation. ~~(1) Upon-a-charge-filed--against--a--corporation--for--the--commission--of--an-offense,-the-court-shall-issue-a-summons-setting--forth--the-nature--of--the--offense--and--commanding-the-corporation-to-appear-before-the-court-at-a-certain-time-and-place.~~

~~(2)--The-summons-for-the-appearance-of-a-corporation-may-be-served-in-the-manner-provided-for-service-of-summons-upon-a-corporation-in-a-civil-action.~~

~~(3)~~ If after being summoned the corporation ~~does not~~ appear, a plea of not guilty ~~shall~~ must be entered ~~by-the-court-having-jurisdiction-to-try-the-offense-for--which--the-summons--was--issued-and-such-court-shall~~ in accordance with 46-12-204 and the matter must proceed to trial and judgment without further process."

Section 28. Section 46-6-401, MCA, is amended to read:

"46-6-401. ~~Circumstances--under--which--a-peace-officer-may-make-arrests~~ Arrest by peace officer. ~~(1)~~ A peace officer may arrest a person when:

~~(a)~~--he the officer has a warrant commanding that ~~such~~ the person be arrested;

~~(b)~~--he or when the officer believes on reasonable

grounds:

(1) that a warrant for the person's arrest has been issued in this state; or

~~(c)~~(2) ~~he believes on reasonable grounds~~ that a felony warrant for the person's arrest has been issued in another jurisdiction. ~~; or~~

~~(d) he believes on reasonable grounds that the person is committing an offense or that the person has committed an offense and the existing circumstances require his immediate arrest.~~

~~(2) A peace officer may arrest a person anywhere, including his place of residence, if the peace officer has probable cause to believe the person is committing or has committed domestic abuse or aggravated assault against a family member or household member even though the offense did not take place in the presence of the peace officer. A summons of a peace officer to a place of residence by a family or household member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in domestic abuse cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim."~~

NEW SECTION. **Section 29.** Issuance of arrest warrant or summons. (1) Upon the filing of a charge, the court may issue a summons or an arrest warrant as provided in [section

97] and 46-11-201. A summons may be issued to a corporation upon the filing of a charge against it. More than one warrant or summons may be issued on the same charge.

(2) A summons may be served personally or by first-class mail.

Section 30. Section 46-6-202, MCA, is amended to read:

"46-6-202. Form and content of arrest warrant -- execution. (1) ~~A~~ An arrest warrant ~~of arrest shall~~ must:

(a) be in writing in the name of the state of Montana or in the name of a municipality if a violation of a municipal ordinance is charged;

(b) set forth the nature of the offense;

(c) command that the person against whom the complaint was made be arrested and brought before ~~the court issuing the warrant or, if the judge is absent or unable to act,~~ before the nearest or most accessible court ~~in the same county or the adjoining county~~ for an initial appearance;

(d) specify the name of the person to be arrested or, if ~~his~~ that person's name is unknown, designate the person by any name or description by which ~~he~~ the person can be identified with reasonable certainty;

(e) state the date when issued and the municipality or county where issued; and

(f) be signed by the judge of the court with the title of ~~his~~ office noted.

(2) The ~~warrant--of~~ arrest warrant may specify the amount of bail.

(3) ~~The~~ An arrest warrant ~~shall~~ may be directed to all peace officers in the state. It ~~shall~~ must be executed by a peace officer and may be executed in any county of the state. ~~However,-warrants~~ Arrest warrants issued for the violation of city ordinances ~~cannot~~ may not be executed outside the city limits, except as otherwise provided by ~~7-32-4301-and-7-32-4302~~ law.

~~(4)--If-an-arrest-is-made-in-a-county-other-than-the-one in--which--the-warrant-was-issued,-the-arrested-person-shall be-taken-without-unnecessary-delay-before--the--nearest--and most--accessible--judge--in--the-county-where-the-arrest-was made-or-the-adjoining-county.~~"

Section 31. Section 46-6-203, MCA, is amended to read:

"46-6-203. Manner of arrest with a warrant. (1) When making an arrest pursuant to a warrant, a peace officer shall inform the person to be arrested of the officer's authority, ~~of~~ the intention to arrest ~~him~~ that person, ~~of~~ the cause of the arrest, and ~~of~~ the fact that a warrant has been issued for ~~his~~ that person's arrest, except:

(a) when ~~he~~ the person flees or forcibly resists before the peace officer has an opportunity to ~~so~~ inform ~~him~~ the person; or

(b) when the giving of ~~such~~ the information will

imperil the arrest.

(2) The peace officer need not have ~~the-warrant-in--his~~ possession of the warrant at the time of the arrest, but after the arrest, the warrant must be shown to the person arrested as soon as practicable if ~~such~~ the person ~~so~~ requests."

NEW SECTION. **Section 32.** Basis for arrest without warrant. (1) A peace officer may arrest a person when no warrant has been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) The summoning of a peace officer to a place of residence by a family member or household member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in domestic abuse cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

Section 33. Section 46-6-106, MCA, is amended to read:

"46-6-106. Manner of arrest without a warrant. A peace officer or person making an arrest without a warrant must shall inform the person to be arrested of ~~his~~ the officer's authority, ~~if--any,~~ of the intention to arrest ~~him~~ that person, and of the cause of the arrest, except when the

person to be arrested is actually engaged in the commission of or in an attempt to commit an offense or is pursued immediately after its commission or, after an escape, or when the giving of such the information will imperil the arrest."

Section 34. Section 46-6-104, MCA, is amended to read:

"**46-6-104. Method** of arrest. (1) An arrest is made by an actual restraint of the person to be arrested or by his the person's submission to the custody of the person making the arrest.

(2) All necessary and reasonable force may be used in making an arrest, but the person arrested shall may not be subject to any greater restraint than is necessary to hold or detain him that person.

(3) All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest."

Section 35. Section 46-6-105, MCA, is amended to read:

"**46-6-105. Time of making arrest.** An arrest may be made on--any-day-and at any time of the day or night, except that a person cannot may not be arrested in his the person's home or private dwelling place at night for a misdemeanor committed at some other time and place unless upon the direction of a magistrate judge endorsed upon a an arrest warrant of-arrest. However, a person may be arrested in his

the person's home or private dwelling at night if he the person is being arrested pursuant to 46-6-401[2] [section 32] for the offense of domestic abuse or-aggravated-assault against-a-family-member-or-household-member.-A-summons-of--a peace-officer-to-the-home-or-private-dwelling-by-a-family-or household--member--constitutes--an--exigent-circumstance-for making-an-arrest-pursuant-to-46-6-401[2]."

Section 36. Section 46-6-421, MCA, is amended to read:

"**46-6-421. Written report when no arrest made in domestic violence situation.** When a peace officer is called to the scene of a reported incident of domestic violence but he does not make an arrest, he the peace officer shall file a written report with the officer commanding the law enforcement agency employing him the peace officer, setting forth the reason or reasons for his the decision."

Section 37. Section 46-6-403, MCA, is amended to read:

"**46-6-403. Release by-officer--of--person--arrested.** A When no warrant has been issued, a peace officer having custody of a person arrested without-a-warrant-is-authorized to may release the arrested person without requiring him that person to appear before a court when the officer is satisfied that there are no insufficient grounds for criminal--complaint--against-the-person-arrested to commence prosecution."

Section 38. Section 46-6-402, MCA, is amended to read:

"46-6-402. Assisting a peace officer. (1) A peace officer making a lawful arrest may command the aid of persons 18 years of age or older.

(2) A person commanded to aid a peace officer in making an arrest: ~~shall have~~

(a) has the same authority to arrest as that officer~~.~~; and

~~(3)--A-person-commanded-to-aid-a-peace-officer-in-making an-arrest-shall-not-be~~

(b) is not civilly liable for any reasonable conduct in aid of the officer."

Section 39. Section 46-6-411, MCA, is amended to read:

"46-6-411. ~~Close--pursuit--------arrest-- by---officers~~ Assisting officer of another state ---procedure. (1) Any peace officer of another state, of the United States, or of the District of Columbia who enters this state in close pursuit ~~and--continues--within--this--state--in--such--close pursuit~~ of a person in order to arrest ~~him~~ the person ~~shall have~~ has the same authority to arrest and hold ~~in--custody~~ ~~such~~ the person in custody as peace officers of this state have to arrest and hold in custody a person on the ground that ~~he has~~ the person has committed a crime in this state.

(2) If an arrest is made in this state by an officer of another state ~~in---accordance--with--the--provisions--of subsection-(1)~~, ~~he~~, of the United States, or of the District

of Columbia, the officer shall without unnecessary delay take the arrested person arrested before a judge of a court of record, who shall conduct a hearing for the sole purpose of determining if the arrest was in accordance with the provisions of subsection (1) and not for the purpose of determining the guilt or innocence of the arrested person.

(3) If the judge determines that the arrest was in accordance with ~~such--provisions~~,--~~he~~ subsection (1), the judge shall commit the arrested person arrested to the custody of the officer making the arrest, who shall without unnecessary delay take ~~him~~ the arrested person to the state from which ~~he~~ that person fled. If the judge determines that the arrest was unlawful, ~~he~~ the judge shall discharge the person arrested.

~~(3)--Subsection-(1)-shall~~

(4) This section may not be construed ~~so as~~ to make unlawful any arrest in this state which that would otherwise be lawful.

~~(4)--For-the-purpose-of-this-section,-the--word--"state" shall-include-the-District-of-Columbia;~~

~~(5)--This--section--may--be-cited-as-the-"Uniform-Act-on Close-Pursuit";~~"

Section 40. Section 46-6-502, MCA, is amended to read:

"46-6-502. ~~When arrest~~ Arrest by private person authorized. (1) A private person may arrest another when:

~~(1)--he--believes--on-reasonable-grounds-that-an-offense is-being-committed-or-attempted-in-his-presence;~~

~~(2)--a-felony-has-in-fact-been-committed-and-he-believes on-reasonable-grounds-that-the-person-arrested-has-committed it;-or~~

~~(3)--he-is-a-merchant,-as-defined-in-30-11-301,-and--has probable--cause--to--believe-the-other-is-shoplifting-in-the merchant's-store~~ there is probable cause to believe that the person is committing or has committed an offense and the existing circumstances require the person's immediate arrest.

(2) A private person making an arrest shall immediately notify the nearest available law enforcement agency or peace officer and give custody of the person arrested to the officer or agency."

NEW SECTION. **Section 41.** Custody by peace officer. A peace officer who, pursuant to law, takes custody of a person arrested by a private citizen shall proceed in accordance with 46-6-104 and 46-6-106 and as otherwise provided by law.

Section 42. Section 46-5-401, MCA, is amended to read:

"46-5-401. ~~Stop----and---frisk--------when---authorized~~ Investigative stop. ~~(1)~~ A In order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person, a peace officer may stop any

person he---observes or vehicle that is observed in circumstances that ~~give--him--reasonable--cause--to--suspect~~ create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense, ~~involving-the-use-or-attempted use--of--force--against--a--person--or--theft,--damage,---or destruction--of-property-if-the-stop-is-reasonably-necessary to-obtain-or-verify-an-account-of-the-person's--presence--or conduct-or-to-determine-whether-to-arrest-the-person.~~

~~(2)--A--peace--officer-may-stop-any-person-he-finds-near the-scene-of-an-offense-that--he--has--reasonable--cause--to suspect-has-just-been-committed-if:~~

~~(a)--he--has-reasonable-cause-to-suspect-that-the-person has-knowledge-of-material-aid-to-the--investigation--of--the offense;-or~~

~~(b)--the--stop--is--reasonably--necessary--to--obtain-or verify-the-person's-identity-or-an-account-of-the-offense.~~

~~(3)--A-peace-officer-may-stop-any-person--in--connection with--an--offense--that-he-has-probable-cause-to-believe-has been-committed-if:~~

~~(a)--the-offense-is-a-felony-involving-the--use--or--the attempted-use-of-force-against-a-person-or-theft,-damage,-or destruction-of-property;~~

~~(b)--he--has--reasonable--cause--to--suspect--the-person committed-the-felony;-and~~

~~(c)--(i)-the-stop-is-reasonably-necessary-to--obtain--or verify--the-person's-identity-to-determine-whether-to-arrest the-person-for-the-felony;-or~~

~~(ii)-the-peace-officer-has-reasonable-cause--to--suspect that-the-person-was-present-at-the-scene-of-the-offense;-and the--stop--is--reasonably--necessary-to-obtain-or-verify-the person's-identity;"~~

Section 43. Section 46-5-402, MCA, is amended to read:

"46-5-402. Stop and frisk ----procedure. ~~(1)~~ A peace officer who has lawfully stopped a person under ~~this-part~~ may 46-5-401 or this section:

~~(a)~~(1) may frisk the person and take other reasonably necessary steps for protection if ~~he~~ the officer has reasonable cause to suspect that the person is armed and presently dangerous to ~~him~~ the officer or another person present; and

~~(b)~~(2) may take possession of any object that ~~he discovers~~ is discovered during the course of the frisk if ~~he~~ the officer has probable cause to believe the object is a deadly weapon;

~~(2)--A-peace-officer-who-has-lawfully-stopped--a--person under-this-part~~

(3) may demand of the person ~~his~~ name and ~~his~~ present or last address; of the person; and

~~(3)--A-peace-officer-who-has-lawfully-stopped--a--person~~

~~under-this-part~~

(4) shall inform the person, as promptly as possible under the circumstances and in any case before questioning the person, that ~~he~~ the officer is a peace officer, that the stop is not an arrest but rather a temporary detention for an investigation, and that upon completion of the investigation, the person will be released ~~unless-he-is~~ if not arrested.

~~(4)--After-the-authorized-purpose-of-the-stop--has--been accomplished--or--30--minutes-have-elapsed,-whichever-occurs first,-the-peace-officer-shall-allow-the-person-to-go-unless he-has-arrested-the-person;"~~

NEW SECTION. **Section 44.** Duration of stop. A stop authorized by 46-5-401 or 46-6-411 may not last longer than is necessary to effectuate the purpose of the stop.

Section 45. Section 46-5-502, MCA, is amended to read:

"46-5-502. Authority to establish roadblocks. ~~The--duly elected--or-appointed~~ Any law enforcement ~~officers~~ agency of this state ~~and-their-deputies-are-hereby~~ is authorized to establish, ~~in--their--respective--jurisdictions-or-in-other~~ jurisdictions within ~~the-state~~ its jurisdiction, temporary roadblocks on the highways of this state for the purpose of identifying drivers, or checking for driver's licenses, ~~and apprehending--persons--wanted--for--violation-of-the-laws-of this-state,-of-any-other-state,-or-of-the-United-States--who~~

~~are--using--the-highways-of-this-state~~ vehicle registration, and insurance."

NEW SECTION. **Section 46.** Establishing roadblock. A written plan for establishing a roadblock must be designed by supervisory officers within the law enforcement agency to ensure motorist safety, minimize motorist inconvenience, and prevent the arbitrary selection of vehicles by providing a schedule for the selection of vehicles to be stopped.

Section 47. Section 46-5-101, MCA, is amended to read:

"46-5-101. Searches and seizures -- when authorized. A search of a person, object, or place may be made and ~~instruments,-articles,-or-things~~ evidence, contraband, and persons may be seized in accordance with ~~the-provisions-of this-chapter~~ Title 46 when the a search is made:

~~(1) as-an-incident-to-a-lawful-arrest;~~

~~(2)--with-the-consent-of-the-accused--or--of -any--other person--who-is-lawfully-in-possession-of-the-object-or-place to-be-searched-or-who-is-believed-upon-reasonable--cause--to be--in--such--lawful--possession--by--the--person-making-the search;~~

~~(3)~~ by the authority of a valid search warrant; or

~~(4)--under-the-authority-and-within-the-scope-of-a-right of-lawful-inspection-granted-by-law~~

(2) in accordance with recognized exceptions to the warrant requirement."

Section 48. Section 46-5-103, MCA, is amended to read:

"46-5-103. When search and seizure not illegal. (1) No A search and seizure, whether with or without a warrant, ~~shall~~ may not be held to be illegal ~~as-to-a-defendant~~ if:

~~(1)~~(a) the defendant has disclaimed any right to or interest in the place or object searched or the ~~instruments, articles~~ evidence, contraband, or ~~things~~ person seized;

~~(2)~~(b) ~~no~~ a right of the defendant has not been infringed by the search and seizure; or

~~(3)~~(c) any ~~irregularities~~ irregularity in the proceedings ~~do--not-affect~~ has no effect on the substantial rights of the accused.

(2) Evidence, contraband, or persons lawfully seized are admissible as evidence in any prosecution or proceeding whether or not the prosecution or proceeding is for the offense in connection with which the search was originally made."

NEW SECTION. **Section 49.** Authority to issue search warrant. (1) A peace officer, the city or county attorney, or the attorney general may apply for a search warrant.

(2) A search warrant may be issued by:

(a) a city or municipal court judge or justice of the peace within the judge's geographical jurisdiction; or

(b) a district court judge within this state.

Section 50. Section 46-5-202, MCA, is amended to read:

"46-5-202. Grounds for search warrant. ~~(1)~~ Any A judge may shall issue a search warrant to a person upon the ~~written or telephonic~~ application ~~of any person~~, in writing or by telephone, made under oath or affirmation ~~before the judge~~, which that:

~~(a)~~(1) states facts sufficient to support probable cause to believe that an offense has been committed;

~~(b)~~(2) states facts sufficient to show support probable cause ~~for issuance of the warrant~~ to believe that evidence, contraband, or persons connected with the offense may be found;

~~(c)~~(3) particularly describes the place, ~~things~~ object, or persons to be searched; and

~~(d)~~(4) particularly describes ~~the things~~ who or what is to be seized.

~~(2) Whenever the application is made by telephone, the applicant's telephonic oath or affirmation is considered to have been made before the judge, and the sworn or affirmed telephonic testimony must be electronically recorded by the judge on a recording device in the custody of the judge when the application is made. The recording must be retained in the court records and transcribed verbatim, including the time and date of recording, as soon as possible thereafter.~~

~~(3) Whenever a law enforcement officer wishes to obtain a search warrant by telephone, he shall first contact the~~

~~county attorney or a deputy county attorney. If the county attorney or deputy county attorney is convinced that a warrant is justified and that the circumstances require its immediate issuance, he shall telephone the judge and state that he is convinced that the warrant should be issued by telephone. The judge shall then telephone the officer at the number provided by the county attorney or deputy county attorney, and the officer shall make his application as provided in subsection (2). If the judge approves a warrant, the officer shall sign the warrant with his own name and the judge's name. A search warrant issued upon the telephonic request of a person other than the county attorney or a deputy county attorney is not valid unless the procedure provided for in this subsection is followed.~~

~~(4) A search warrant issued upon any telephonic request is invalid unless it is subsequently signed by the issuing judge or his successor.~~"

NEW SECTION. **Section 51.** Search warrants issued by telephone. (1) Whenever the application for a search warrant is made by telephone, the applicant shall, in addition to the requirements contained in 46-5-202, state reasons to justify immediate issuance of a search warrant.

(2) All testimony given over the telephone that is intended to support an application for a search warrant must be given on oath or affirmation and must identify the person

testifying. For the purpose of this section, the judge is authorized to administer an oath or affirmation by telephone.

(3) Sworn or affirmed testimony given over the telephone must be electronically recorded by the judge on a recording device in the custody of the judge when the application is made. The recording must be retained in the court records and must be transcribed verbatim as soon as possible after the application is made. The recording must include the time and date it was recorded.

(4) If the judge approves a warrant over the telephone, the peace officer serving the warrant shall sign the search warrant in the officer's own name and in the judge's name. The peace officer signing the judge's name shall initial the judge's name indicating the signature was authorized by the judge but signed by the officer.

(5) Any search warrant issued by telephone must be signed by the issuing judge or the judge's successor as soon as possible after it has been issued.

NEW SECTION. **Section 52.** To whom search warrant directed. A search warrant must be directed to a specific peace officer commanding the officer to search for and seize the evidence, contraband, or person designated in the warrant.

Section 53. Section 46-5-203, MCA, is amended to read:

"46-5-203. What may be seized with search warrant. A search warrant may ~~authorize the seizure of the following~~ be issued under this section to search for and seize any:

(1) evidence;

~~(1)~~(2) contraband; or

~~(2) any instruments, articles, or things which are the fruits of, have been used in the commission of, or may constitute evidence of any offense;~~

(3) any person ~~who has been kidnapped in violation of the laws of this state or who has been kidnapped in another jurisdiction and is now concealed within this state~~ for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained."

Section 54. Section 46-5-205, MCA, is amended to read:

"46-5-205. ~~Who may serve~~ Service of search warrant. A search warrant may must in all cases be served by ~~any of the officers mentioned in its direction but~~ peace officer specifically named and by no other person except in aid of the officer ~~on his requiring it, he being~~ when the officer is present and acting in its execution service."

Section 55. Section 46-5-206, MCA, is amended to read:

"46-5-206. Service and execution return of search warrant. Service of a search warrant is made by exhibiting the original warrant or a duplicate original warrant at the

place or to the person to be searched. ~~If the warrant is executed, a duplicate~~ The officer taking property under the warrant shall give to the ~~copy and a receipt for all articles taken shall be left with any~~ person from whom ~~any instruments, articles, or things are seized~~ or ~~, if no person is available,~~ from whose premises the property is taken a copy of the search warrant and a receipt for the property taken or shall leave the copy and receipt ~~shall be left~~ at the place from which the ~~instruments, articles, or things were seized~~ property was taken. Failure to give or leave ~~such~~ a copy and receipt ~~shall~~ may not render the ~~evidence~~ property seized inadmissible ~~in a~~ at trial."

Section 56. Section 46-5-208, MCA, is amended to read:

"**46-5-208. Use of force in execution** service of search warrant. All necessary and reasonable force may be used to ~~execute~~ serve a search warrant or to effect an entry into any building, ~~or~~ property, ~~or part thereof~~ object to ~~execute~~ serve a search warrant."

Section 57. Section 46-5-209, MCA, is amended to read:

"**46-5-209. Detention and search of persons on premises.** ~~In the execution of the warrant the~~ The person ~~executing~~ serving the ~~same~~ search warrant may reasonably detain and search any person ~~in the place~~ on the premises being searched at the time of the search:

(1) ~~to protect himself from attack~~ for self-protection;

or

(2) to prevent the disposal or concealment of ~~any instruments, articles,~~ evidence, contraband, or ~~things~~ persons particularly described in the warrant."

Section 58. Section 46-5-301, MCA, is amended to read:

"**46-5-301. Return to court of things seized under search warrant.** (1) ~~The~~ A return of the warrant and all ~~instruments, articles, and things seized shall~~ must be made promptly ~~before the judge who issued the warrant or, if he is absent or unavailable, before the nearest available judge~~ and ~~shall~~ must be accompanied by a written inventory of any property evidence or contraband taken, verified by the person ~~executing~~ serving the warrant. The return must be made before the judge who issued the warrant or, if the judge is absent or unavailable, before the nearest available judge.

(2) The judge shall, upon request, deliver a copy of the inventory and the order of custody or disposition to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(3) The judge shall enter an order providing for the custody or appropriate disposition of the evidence or contraband seized pending further proceedings."

Section 59. Section 46-5-207, MCA, is amended to read:

"**46-5-207. When warrant may be executed** served. ~~(1)~~ The

warrant may be executed served at any time of any the day or night.

~~(2)~~ The warrant ~~shall~~ must be executed served within 10 days from the time of issuance. Any warrant not executed served within ~~such time~~ 10 days ~~shall be~~ is void and ~~shall~~ must be returned to the court or the judge issuing the same warrant and identified as "not executed served".

Section 60. Section 46-5-204, MCA, is amended to read:

"46-5-204. Filing of application return. (1) The application on which the warrant is issued ~~shall~~ must be retained by the judge but need is not required to be filed with the clerk of the court or with the court, if there is no clerk, until the warrant has been executed served or has been returned "not executed served".

(2) The judge before whom the warrant is returned shall attach to the warrant a copy of the return, the inventory, and all other papers in connection with the warrant and shall file them with the issuing court."

Section 61. Section 46-5-303, MCA, is amended to read:

"46-5-303. Custody and disposition of things seized -- seizure without search warrant. (1) Evidence or contraband lawfully seized without a warrant may be retained in the custody of the officer making the seizure for a time sufficient to complete an investigation.

(2) ~~Any peace officer seizing any instruments, articles, or things must give~~ Notice of the seizure and a receipt for the evidence or contraband seized must be given to the person from whose possession ~~they are~~ the evidence or contraband was taken and to the owner of the evidence or contraband if the owner is reasonably ascertainable. ~~, but~~ The failure to give such a receipt ~~shall~~ may not render the evidence seized inadmissible upon a at trial.

~~(2) If an arrest has been made, all instruments, articles, or things seized on a search without warrant shall be delivered to the judge before whom the person arrested is taken and thereafter handled and disposed of in accordance with 46-5-301, 46-5-302, and 46-5-304. If the person arrested is released without a charge being preferred against him, all instruments, articles, or things seized from him other than contraband shall be returned to him upon release.~~

~~(3) If no arrest has been made, such instruments, articles, or things may be retained in the custody of the officer making the seizure for a time sufficient for investigation of the supposed crime, after which they must be delivered to the proper judge for disposition in accordance with 46-5-301, 46-5-302, and 46-5-304 or returned to the person from whom they were taken.~~"

Section 62. Section 46-5-304, MCA, is amended to read:

"46-5-304. Return of property seized -- right to

possess. (1) Any A person claiming the right to possession of property seized as evidence may apply to the judge to whom-it-has-been-delivered for its return. The judge shall give such written notice as he-deems the judge considers adequate to the county attorney prosecutor and all persons who have or may have an interest in the property and shall hold a hearing to hear-all--claims--to--its--true--ownership determine the right to possession.

(2) If the right to possession is proved to-the-judge's satisfaction,--he established, the judge shall order the property, other than contraband, returned if:

(a) the property is not needed as evidence; or,-if

(b) the property is needed, and satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b)(c) all proceedings in which it the property might be required have been completed."

Section 63. Section 46-5-305, MCA, is amended to read:

"46-5-305. Disposition of unclaimed property. If property seized as evidence is not claimed within 6 months of the completion of the case for which it was seized, it must-be-disposed-of-pursuant-to-the-provisions--of--46-5-306 through--46-5-309 the officer having custody of it shall apply to the court for its disposition. If the judge, after proper inquiry, cannot ascertain or locate any person

entitled to its possession, the judge shall order the property to be sold or, if contraband, destroyed by the sheriff. After deducting the costs of storage, preservation of evidence, and the sale, the proceeds from the sale must be paid into the county general fund."

Section 64. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) Every--defendant brought During the initial appearance before the court, every defendant must be informed by-the-court-that-it-is-his of the right to have counsel, before-proceeding and must be asked if he-desires the aid of counsel is desired.

(2) The-defendant,-if-charged-with-a--felony,--must--be advised--that--counsel-will-be-furnished-at-state-expense-if he-is unable-to--employ--counsel--as--determined--under--the provisions--of--46-8-111;-if-the-offense-charged-is-a-felony and-if If the defendant desires counsel, and is unable to employ counsel, a and is entitled to have counsel assigned, the court must shall assign counsel to defend--him the defendant without unnecessary delay.

(3) if--the-offense-charged-is-a-misdemeanor-and-if-the defendant-desires-counsel-and-is-unable-to-employ-counsel,-a court-in-the-interest--of--justice--may--assign--counsel--to defend--him. The defendant, if unable to employ counsel, is entitled to have counsel assigned if:

(a) the offense charged is a felony;

(b) the offense charged is a misdemeanor and the court desires to retain imprisonment as a sentencing option; or

(c) the interests of justice would be served by assignment."

Section 65. Section 46-8-102, MCA, is amended to read:

"46-8-102. Waiver of counsel. A defendant may waive ~~his~~ the right to counsel~~,--except--that--in--all--felony--cases--where--the--defendant--is--under--18--years--of--age,--the--defendant--shall--be--represented--by--counsel--at--every--stage--of--the--proceedings--following--the--filing--of--a--petition--under--41-5-501~~ when the court ascertains that the waiver is made knowingly, voluntarily, and intelligently."

Section 66. Section 46-8-103, MCA, is amended to read:

"46-8-103. Duration of appointment. (1) Where When counsel has been assigned, such the assignment ~~shall be~~ is effective until final judgment, including any proceeding upon direct appeal to the Montana supreme court, unless relieved by order of the court that assigned counsel.

(2) If counsel finds the defendant's case on appeal to be wholly frivolous, counsel shall advise the court of that fact and request permission to withdraw. The request to withdraw must be accompanied by a memorandum referring to anything in the record that might arguably support the appeal. The defendant is entitled to receive a copy of counsel's memorandum and to file a reply with the court."

Section 67. Section 46-8-111, MCA, is amended to read:

"46-8-111. Eligibility for court-appointed counsel -- determination of indigence. (1) The court shall make a determination of indigence.

(2) ~~Any--defendant--who--desires--counsel--and--is--unable--to--employ--counsel~~ In applying for court-appointed counsel, a defendant shall submit ~~under--oath--to--the--court--at--the--time--of--his--initial--appearance--a--verified~~ a sworn financial statement ~~showing~~ demonstrating ~~his~~ financial inability to obtain ~~counsel~~, legal

~~(2)--Except--as--provided--in--subsection--(3),--appointed--counsel--may--not--be--denied--to--any--person--merely--because--his--friends--or--relatives--have--the--resources--to--retain--counsel--or--because--he--has--deposited--or--is--capable--of--depositing--security--for--his--release.--Counsel--shall--be--provided--to--any--person--who--is--financially--unable--to--obtain~~ representation without substantial hardship in providing for personal or family necessities ~~to--himself--or--his--family~~. The statement is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the declarant for perjury or false swearing.

~~(3)--In--determining--whether--a--minor--charged--with--an--offense--which,--if--committed--by--an--adult,--would--be--a--felony--is--eligible--for--court-appointed--counsel,--the--court--shall--consider--the--resources--of--the--minor--and--his--parents--and--may~~

deny--or--appoint--counsel--accordingly.--The--minor-and-his parents-shall--submit--under--oath--the--verified--financial statement-required-by-subsection-(1)."

Section 68. Section 46-8-113, MCA, is amended to read:

"46-8-113. Payment of--costs--of for court-appointed counsel by defendant ---condition-of-sentence. (1) Under-the provisions--of--46-18-201,--the The court may require a convicted defendant to pay the costs of court-appointed counsel as a part of or a condition under his the sentence imposed as provided in Title 46.

(2) Costs must be limited to reasonable compensation and costs incurred by the court-appointed counsel in the criminal proceeding. Costs-may-not-include-expenses-inherent in--providing--a--constitutionally--guaranteed-jury-trial-or expenditures--in--connection--with---the---maintenance---and operation--of--government--agencies-that-must-be-made-by-the public-irrespective-of-specific-violations-of-law.

(3) The court may not sentence a defendant to pay the costs of court-appointed counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof of

those costs may at any time petition the court that sentenced him the defendant for remission of the payment of costs or of any unpaid portion thereof of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment."

Section 69. Section 46-8-114, MCA, is amended to read:

"46-8-114. Time and method of payment of-costs. When a defendant is sentenced to pay the costs of court-appointed counsel, the court may order payment to be made within a specified period of time or in specified installments. Such payments shall Payments must be made to the clerk of the district court. The clerk of the district court shall disburse distribute the payments to the county,-agency, state-agency,-or-local government unit agency responsible for the expenses expense of court-appointed counsel as provided for in 46-8-201."

Section 70. Section 46-8-115, MCA, is amended to read:

"46-8-115. Effect of nonpayment of-costs. (1) When a defendant who is sentenced to pay the costs of court-appointed counsel defaults in payment thereof of the costs or of any installment, the court on motion of the county attorney or on its own motion may require him to show

cause why ~~his~~ the default should not be treated as contempt of court and may issue a show cause citation or ~~a warrant of arrest for his~~ an arrest warrant requiring the defendant's appearance.

(2) Unless the defendant shows that ~~his~~ the default was not attributable to an intentional refusal to obey the order of the court or to a failure on ~~his~~ the defendant's part to make a good faith effort to make the payment, the court may find that ~~his~~ the default constitutes civil contempt.

(3) The term of imprisonment for contempt for nonpayment of the costs of court-appointed counsel ~~shall~~ must be set forth in the judgment and may not exceed 1 day for each $25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

(4) If it appears to the satisfaction of the court that the default in the payment of costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the order for payment ~~or~~ of the unpaid portion ~~thereof~~ of the costs in whole or in part.

(5) A default in the payment of costs or any

installment ~~thereof~~ may be collected by any means authorized by law for the enforcement of a judgment. The writ of execution for the collection of costs may not discharge a defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been collected."

Section 71. Section 46-8-201, MCA, is amended to read:

"46-8-201. Remuneration of appointed counsel. (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney ~~shall~~ must be paid for ~~his~~ the services ~~such~~ a sum as a district court judge or justice of the state supreme court certifies to be a reasonable compensation ~~therefor~~ and ~~shall~~ be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable as provided in 3-5-901 to the county in which the proceeding arose, the department of commerce, or both, except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; and or

(b) when there has been an arrest by agents of the

department of fish, wildlife, and parks or agents of the department of justice and the charge is prosecuted by personnel of the state agency that made the charge, the expense must be borne by the prosecuting state agency."

NEW SECTION. **Section 72.** General authority for release and detention. (1) An arrested person must be released or detained pending judicial proceedings pursuant to [sections 73, 76, 77, 86]; Title 46, chapter 9; and this section.

(2) If a person is released, that person shall appear to answer the charge for the alleged commission of the offense, as ordered, in the court having jurisdiction.

NEW SECTION. **Section 73.** Release or detention of defendant pending trial. Before a verdict has been rendered, the court shall:

(1) authorize the release of the defendant upon reasonable conditions that ensure the appearance of the defendant and protect the safety of the community or of any person; or

(2) detain the defendant when there is probable cause to believe that the defendant committed an offense for which death is a possible punishment and adequate safeguards are not available to ensure the defendant's appearance and the safety of the community.

Section 74. Section 46-9-103, MCA, is amended to read:

"46-9-103. Bail Release or detention pending sentence

or appeal -- revocation -- sentencing hearing. ~~(1)~~ ~~(a)~~ A person intending to appeal from a judgment imposing a fine only or from any judgment rendered by a justice's court or city court must be admitted to bail.

~~(b)~~ --A--person The court shall order the detention of a defendant found guilty of an offense and who is awaiting imposition or execution of sentence or a revocation hearing or ~~a-person-found-guilty-of-an-offense-and--sentenced--to--a term-of-imprisonment~~ who has filed an appeal ~~may-be-admitted to--bail--only--if-the-judge~~ unless the court finds that, if released, the person defendant is not likely to flee and ~~does--not~~ or pose a danger to the safety of any other person or the community.

~~(2)--A-person-found-guilty-of-the-offense-of--deliberate homicide--is--presumed-to-pose-a-danger-to-the-safety-of-the community;-which-presumption-is-rebuttable:~~"

Section 75. Section 46-9-501, MCA, is amended to read:

"46-9-501. ~~Form-of-conditions-of-bail~~ Conditions upon defendant's release. (1) ~~If-a-person-is-admitted-to-bail,~~ the conditions of bail shall be:

~~(a)--that-he-will-appear-to-answer-in-the--court--having jurisdiction--on--a-day-certain-and-thereafter-as-ordered-by the-court-until-discharged-on-final-order-of-the--court--and will-not-depart-from-this-state-without-leave;-and~~

~~(b)--any--other-conditions-that-the~~ The court may impose

any condition that will reasonably ~~prescribe to assure his~~ ensure the appearance of the defendant as required ~~and to protect any person from bodily injury~~ or that will ensure the safety of any person or the community, including but not limited to ~~a condition that the person admitted to bail~~ the following conditions:

(a) the defendant may not commit an offense during the period of release;

~~(i)~~(b) the defendant shall remain in the custody of a designated person who agrees to supervise ~~him~~ the defendant and to report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the person defendant will appear as required and will not pose a danger to the safety of any person or the community;

~~(ii)~~(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

~~(iii) maintain or commence an educational program;~~

~~(iv)~~(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

~~(v)~~(e) the defendant shall avoid all contact with an alleged victim of the crime ~~or limit contact with a~~ and any potential witness who may testify concerning the offense; ~~except that contact which is necessary to the preparation of~~

~~the defense;~~

~~(vi)~~(f) the defendant shall report on a regular basis to a designated ~~law enforcement~~ agency or individual, other pretrial services agency, or other appropriate individual;

~~(vii)~~(g) the defendant shall comply with a specified curfew;

~~(viii)~~(h) ~~refrain from possessing~~ the defendant may not possess a firearm, destructive device, or other dangerous weapon;

~~(ix)~~(i) ~~refrain from~~ the defendant may not use of or possess alcohol, ~~or a~~ or any dangerous drug or other controlled substance without a legal prescription ~~from a licensed medical practitioner;~~

~~(x) undergo available medical or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose~~

(j) the defendant shall furnish bail in accordance with 46-9-401; or

(k) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive

condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party ~~judge-may-at-any-time--amend--his order--to--impose--additional--or--different--conditions--of release.~~

~~(3)--If---the---defendant--is--admitted--to--bail--after conviction,-the-conditions-of-bail,-in-addition-to-those-set forth-in-subsection-(1),-shall-be-that:~~

~~(a)--he-will-duly-prosecute-his-appeal;-and~~

~~(b)--if-the-judgment-is-affirmed-or-the--caus---reversed and-remanded-for-a-new-trial,-he-will-forthwith-surrender-to the-officer-from-whose-custody-he-was-bailed."~~

NEW SECTION. **Section 76.** Release or detention hearing. (1) The release or detention of the defendant must be determined immediately upon the defendant's initial appearance.

(2) In determining whether the defendant should be released or detained, the court shall take into account the available information concerning:

(a) the nature and circumstances of the offense charged, including whether the offense involved the use of force or violence;

(b) the weight of the evidence against the defendant;

(c) the history and characteristics of the defendant, including:

(i) the defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to alcohol or drug abuse, criminal history, and record concerning the appearance at court proceedings; and

(ii) whether at the time of the current arrest or offense, the defendant was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentencing for an offense;

(d) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release; and

(e) the property available as collateral for the defendant's release to determine if it will reasonably ensure the appearance of the defendant as required.

(3) Upon the motion of any party or the court, a hearing may be held to determine whether bail is established in the appropriate amount or whether any other condition or restriction upon the defendant's release will reasonably ensure the appearance of the defendant and the safety of any person or the community.

NEW SECTION. **Section 77.** Release order. A release order issued by the court must include a written statement setting forth any restrictions or conditions upon the defendant's release.

Section 78. Section 46-9-202, MCA, is amended to read:

"46-9-202. ~~Giving--bail--before--another--court--or--judge~~ Release ordered by court where charge not pending. ~~The defendant,--when--arrested--for--a--bailable--offense,--must--be taken--without--unnecessary--delay--before--the--nearest--or--most accessible--judge--in--order--that--bail--may--be--fixed.--If--the defendant--is--brought--before--a--judge~~ If release is ordered or bail is accepted by a court other than the court in which the charge is pending, ~~the--judge--must--establish--and--accept bail--and--set--the--time--for--the--appearance--of--the--defendant--in the--court--in--which--the--charge--is--pending~~ any bonds, instrument of ownership, or money posted and a written statement of other conditions of release must be delivered. ~~Upon--acceptance--of--bail,--the--judge--must--deliver--the--bail~~ without delay to the court in which the charge is pending."

Section 79. Section 46-9-302, MCA, is amended to read:

"46-9-302. Bail schedule ~~for---minor---offenses~~ -- acceptance by peace officer. (1) A ~~justice--of--the--peace--or~~ city judge may,--in--his--discretion, establish and post a schedule of cash bail for offenses,--except--for--offenses ~~amounting--to--felonies--and--the--offense--of--domestic--abuse~~ over

which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is domestic abuse or any assault against a family member or a household member.

(2) A peace officer may accept bail ~~in~~ on behalf of a ~~the--justice--of--the--peace--or--city~~ judge:

(a) in accordance with the bail schedule established under subsection (1); or

(b) whenever the warrant of arrest specifies the amount of bail.

~~(3) In--the--event--the~~ Whenever a peace officer accepts bail, ~~he~~ the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the ~~justice--of--the--peace--or~~ city judge before whom the offender is to appear, and the ~~justice--of--the--peace--or--city~~ judge shall give a receipt to the peace officer for the bail delivered."

Section 80. Section 46-9-401, MCA, is amended to read:

"46-9-401. ~~How--bail--furnished~~ Forms of bail. (1) Bail may be ~~furnished--by--the--defendant--in--any--of~~ the following ways:

~~(1)~~(a) by a deposit with the ~~clerk--of--the~~ court of an amount equal to the required bail of cash, stocks, or bonds, certificates of deposit, or ~~any--combination--thereof~~ other personal property approved by the judge court;

~~(2)~~(b) by pledging real estate situated ~~in-this~~ within the state with an unencumbered equity, not exempt, owned by the ~~accused~~ defendant or sureties ~~worth~~ at a value double the amount of the required bail;

~~(3)~~(c) by posting a written undertaking executed by the defendant and by two sufficient sureties; or

~~(4)~~(d) by posting a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of ~~such~~ the surety company.

(2) The amount of the bond must ensure the appearance of the defendant at all times required through all stages of the proceeding including trial de novo, if any, and unless the bond is denied by the court pursuant to 46-9-103, must remain in effect until final sentence is pronounced in open court.

(3) Nothing in [sections 72, 73, 76, 77, 86], and this chapter prohibits a surety from surrendering the defendant pursuant to 46-9-205 in a case in which the surety feels insecure in accepting liability for the defendant."

Section 81. Section 46-9-403, MCA, is amended to read:

"46-9-403. Qualifying property as bail. (1) If ~~the-bail-is--stock-or-bonds-or-both~~ property posted as a condition of release is personal property, the ~~accused~~ defendant or sureties shall file a sworn schedule ~~which~~ that must contain a list of the ~~stocks-and-bonds-deposited-describing-each-in~~

~~sufficient--detail--that--it--may--be--identified~~ personal property, including a description of each item, ~~the~~ its location and market value ~~of-each-stock--or--bond,~~ and the total market value of ~~the-stocks-and-bonds~~ all items listed.

(2) ~~(a)~~ If the ~~bail~~ property is real estate:

(a) ~~,--the-accused~~ the defendant or sureties shall file a sworn schedule ~~which~~ that must contain a legal description of the ~~real-estate~~ property, a description of any and all encumbrances on the ~~real--estate~~ property, including the amount of each and the holder ~~thereof~~ of the encumbrance, and the market value of the unencumbered equity owned by the ~~affiant;~~ defendant or sureties; and

(b) ~~A~~ a certified copy of the schedule of ~~real-estate~~ the property must be filed immediately by the court ~~in the~~ office of the clerk and recorder of the county in which the property is situated. ~~,-and-the~~ The state has a lien on ~~such real-estate~~ the property from the time the copy is filed. The clerk and recorder shall enter, index, and record the schedule without requiring any fee.

(3) If the ~~bail~~ property posted as a condition of release is a written undertaking with sureties, each surety must be a resident or freeholder within the state. Each surety must be worth the amount specified in the undertaking, exclusive of property exempt from execution, but the court or ~~magistrate~~ judge on taking ~~bail~~ the

property may allow more than two sureties to justify severally and in amounts less than that expressed in the undertaking if the whole justification is equivalent to ~~that of sufficient bail~~ the amount required.

(4) If the ~~bail~~ property posted as a condition of release is a commercial ~~surety~~ bond, it may be executed by any domestic or foreign surety company ~~which~~ that is qualified to transact surety business in this state. The undertaking must be in the form prescribed by the commissioner of insurance and must state the following:

(a) the name and address of the commercial surety company that issued the bond;

(b) the amount of the bond and the unqualified obligation of the surety company to pay the court should the defendant fail to appear as guaranteed; and

(c) a provision that the surety company may not revoke the undertaking without good cause.

(5) The court may examine the sufficiency of an undertaking and take any action it considers proper to ensure that a sufficient undertaking is posted."

Section 82. Section 46-9-412, MCA, is amended to read:

"46-9-412. ~~Sureties for guaranteed~~ Guaranteed arrest bond certificates. (1) A domestic or foreign surety company ~~which~~ that has qualified to transact surety business in this state may, in any year, become surety in an amount not

exceeding ~~$5,000~~ $500 with respect to any guaranteed arrest bond certificates issued in ~~such~~ the year by an automobile club or association or by an insurance company authorized to write automobile liability insurance within this state by filing with the commissioner of insurance an undertaking to become surety.

(2) The ~~undertaking shall be in a form to~~ form of the undertaking must be prescribed by the commissioner ~~and shall state the following~~ of insurance and must include those matters required by 46-9-401.~~:~~

~~(a) the name and address of the automobile clubs, automobile associations, or insurance companies which issued the guaranteed arrest bond certificates with respect to which the surety company undertakes to be surety; and~~

~~(b) the unqualified obligation of the surety company to pay the fine or forfeiture in an amount not exceeding $5,000 of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted.~~"

Section 83. Section 46-9-414, MCA, is amended to read:

"46-9-414. ~~Motor vehicle violations certificates~~ Certificates accepted in lieu of cash. (1) A guaranteed arrest bond certificate ~~with respect to which a surety~~

company--has--become--surety--or--a--guaranteed--arrest-bond certificate-issued-by-an--insurance--company--authorized--to transact--both--automobile--liability--insurance--and-surety business-within-this--state--as--provided--in--46-9-411--and 46-9-412 shall must, when posted by the person whose signature appears on the certificate, be accepted in lieu of cash bail in an amount not exceeding $5,000 $500 as a bail bond to guarantee the appearance of the person in any court, including a municipal courts court, in this state at a the time as--may--be required by the court when the person was arrested for violation of a motor vehicle law of this state or an ordinance of a municipality in this state (except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on the guaranteed arrest bond certificate.

(2) A guaranteed arrest bond certificate posted--as--a bail--bond--in--a-court-in-this-state is subject to the same forfeiture and enforcement provisions as-bail--bonds--posted in--criminal-cases,-and-a-guaranteed-arrest-bond-certificate posted-as-a-bail-bond-in-a-municipal-court-in-this-state--is subject--to-the-forfeiture-and-enforcement-provisions-of-the chapter--or--ordinance--of---the---particular---municipality pertaining-to-bail-bonds-posted established by [sections 72, 73, 76, 77, 86], and this chapter unless otherwise provided by law."

Section 84. Section 46-9-503, MCA, is amended to read:

"46-9-503. Conditions--not---performed Violation of release condition -- forfeiture. (1) If the-accused-does-not comply--with--the--conditions--of--the--bail-bond,-the-court having-jurisdiction-shall-enter-an-order-declaring-the--bail to-be-forfeited a defendant violates a condition of release, including failure to appear, the prosecutor may make a written motion to the court for revocation of the order of release. A judge may issue a warrant for the arrest of a defendant charged with violating a condition of release. Upon arrest, the defendant must be brought before a judge in accordance with 46-7-101.

(2) If such forfeiture-is-declared-by-a-district-court, a defendant fails to appear before a court as required and bail has been posted, the judge may declare the bail forfeited. notice Notice of such the order of forfeiture shall must be mailed forthwith-by-the-clerk-of-the-court to the accused defendant and his the defendant's sureties at their last-known last-known address.

(3) If at any time within 30 days after the forfeiture the defendant or his-bail the defendant's sureties appear and satisfactorily excuse his-negligence-or the defendant's failure to comply--with-the-conditions-of-the-bail appear, the court,--in--its--discretion, judge may direct the forfeiture of--the-bail to be discharged upon such terms as

may be just.

~~(4)--If-such-forfeiture-is-declared-by-a-district--court and--if-the-forfeiture-is-not-discharged-as-provided-in-this section,-the--court--shall--enter--judgment--for--the--state against--the--accused-and-his-sureties-for-the-amount-of-the bail-and-costs-of-the-proceedings;~~"

Section 85. Section 46-9-205, MCA, is amended to read:

"46-9-205. Surrender of defendant. (1) ~~(a)~~ At any time before the forfeiture of bail~~,~~:

(a) the defendant may surrender ~~himself~~ to the court or any peace officer ~~to-whose-custody-he-was-committed-at-the time-of-giving-bail,~~ of this state; or

~~(b) At-any-time-before--the--forfeiture--of--bail,~~ the ~~sureties--or~~ surety company may arrest the defendant and surrender the defendant to ~~the~~ the court or any peace officer of this state ~~to-whose-custody-he-was-committed-and for-this-purpose-may-themselves-arrest-the-defendant--or--by written--authority--endorsed--on--a--certified--copy--of-the undertaking-may-empower--any--person--of--suitable--age--and discretion-to-do-so.~~

(2) The peace officer ~~must~~ shall detain the defendant in ~~his~~ the officer's custody as upon commitment and shall file a certificate, ~~in-the-court-having-jurisdiction-of-the~~ defendant acknowledging the surrender, in the court having jurisdiction of the defendant. Such The court may then order

the bail exonerated."

NEW SECTION. **Section 86.** Forfeiture procedure. When an order of forfeiture is not discharged, the court having jurisdiction shall proceed with the forfeiture of bail as follows:

(1) if money has been posted as bail, the court shall pay the money to the treasury of the city or county where the money was posted; or

(2) if other property is posted as a condition of release, the property must be sold in the same manner as property sold in civil actions. The proceeds of the sale must be used to satisfy all court costs and prior encumbrances, if any, and from the balance, a sufficient sum to satisfy the judgment or forfeiture must be paid into the treasury of the city or county where the case is pending.

(3) If a surety bond has been posted as bail, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions.

Section 87. Section 46-9-504, MCA, is amended to read:

"46-9-504. ~~Proceedure--on-forfeiture---~~ Use of forfeited bail as restitution. ~~(1) Unless-restitution--is--ordered--as provided---for---in---subsection---(2),---the--court--having jurisdiction-shall-proceed-with-the-disposition-of-forfeited bail-as-follows:~~

~~(a)--if-judgment--be--rendered--or--the--forfeiture--not~~

discharged--and--the--defendant-has-deposited-money-as-bail, the-court-with-whom-it-is-deposited-must,-immediately--after receiving--notice--of--said-judgment-or-order-of-forfeiture, pay-over-the-money-deposited-to-the-treasury-of-the-city--or county-wherein-the-bail-was-taken.

(b)--When--judgment--is-entered-in-favor-of-the-state-or the-order-of-forfeiture--is--not--discharged--on--any--bail, execution--may--be--issued--forthwith--for-levy-on-stocks-or bonds-deposited-with-the--court--or--upon--the--real--estate described-in-the-bail-schedule.-Such-stocks,-bonds,-and-real estate--shall--be--sold--in--the-same-manner-as-in-execution sales-in-civil-actions.-The-proceeds-of-such-sale--shall--be used--to--satisfy-all-court-costs-and-prior-encumbrances,-if any,-and-from-the-balance-a-sufficient-sum--to--satisfy--the judgment--or--forfeiture--shall-be-paid-into-the-treasury-of the-city-or-county-wherein-the--bail--bond--was--taken.--The balance--shall--be-returned-to-the-owner.-The-real-estate-so sold-may-be-redeemed-in-the-same-manner-as-real--estate--may be-redeemed-after-execution-sales-in-civil-actions.

(c)--When--judgment-is-entered-in-favor-of-the-state-and against-the-sureties-or--the--surety--company--or--when--the forfeiture--has-not-been-discharged,-execution-may-be-issued against-the-sureties-or--the--surety--company--in--the--same manner-as-executions-in-civil-actions.

(2) If the court enters a judgment declaring bail to be

forfeited or if the order of forfeiture is not discharged, the court having jurisdiction may order the bail forfeited to be paid as restitution to any victim of the offense for which the court has received bail. Except--as--provided--in 87-1-111,---whenever Whenever the court believes that restitution may be proper, the court shall order a hearing for the purpose of considering the nature and extent of the victim's pecuniary loss as defined in-46-18-243 by law.

(2) If the court finds that restitution is appropriate, the court shall order restitution in an amount not exceeding the amount of the victim's complaint or the amount of the victim's pecuniary loss.

(3) An order to require restitution is a judgment against the defendant and his the defendant's sureties, and the court may order the restitution to be made by payment of money deposited as bail. Any balance of the bail money must be disposed of in the same manner as provided in subsection (1) [section 86].

(4) Provided--no-such A determination or decision under this subsection--shall--be section is not admissible as evidence in any other civil action,-nor-shall it-be and is not res judicata in any other civil action."

Section 88. Section 46-7-101, MCA, is amended to read:

"46-7-101. Bringing Appearance of arrested person before--a--court. (1) Any person making-an-arrest-under-a

~~warrant-shall-take-the~~ arrested person, whether with or without a warrant, must be taken without unnecessary delay ~~before-the-judge-issuing-the-warrant-or,-if-he-is-absent--or unable--to--act,~~ before the nearest or and most accessible judge for an initial appearance ~~of-the-same--county.---If--an arrest--is--made-in-a-county-other-than-the-one-in-which-the warrant-was-issued,--the--arrested--person--shall--be--taken without--unnecessary--delay--before--the--nearest--and--most accessible-judge-in-the-county-where-the-arrest-was-made.~~

~~(2)--Any-person-making-an-arrest-without-a-warrant-shall take--the--arrested--person-without-unnecessary-delay-before the-nearest-or-most-accessible-judge-in-the-same-county,-and a-complaint-stating-the-charges-against-the-arrested--person shall-be-filed-forthwith.~~"

Section 89. Section 46-7-102, MCA, is amended to read:

"46-7-102. Duty of the court ~~at-initial-appearance~~. (1) The judge shall inform the defendant:

(a) of the charge or charges against ~~him~~ the defendant;

(b) of ~~his~~ the defendant's right to counsel;

(c) of ~~his~~ the defendant's right to have counsel assigned by a court of record in accordance with the provisions of 46-8-101;

(d) of the general circumstances under which the defendant may obtain pretrial release;

~~(d)~~(e) ~~that-he-is-not-required~~ of the defendant's right

to refuse to make a statement and the fact that any statement made by ~~him~~ the defendant may be offered in evidence at ~~his~~ the defendant's trial; and

(f) of the defendant's right to a judicial determination of whether probable cause exists if the charge is made by a complaint alleging the commission of a felony.

(2) The judge shall admit the defendant to bail ~~in accordance--with-the-provisions-of-this-title~~ as provided by law."

Section 90. Section 46-7-103, MCA, is amended to read:

"46-7-103. Preliminary ~~hearing--in---justice's---court~~ examination -- when held. After the initial appearance, in all cases where the charge is triable in district court, a the justice's court shall, within a reasonable time, hold a preliminary examination unless:

(1) the defendant waives a preliminary examination;

(2) the district court has granted leave to file an information;

(3) an indictment has been returned; or

(4) the case is triable in justice's court."

Section 91. Section 46-10-102, MCA, is amended to read:

"46-10-102. ~~Waiver of--preliminary-examination~~. If the defendant waives the preliminary examination, the justice judge shall hold ~~him~~ the defendant to answer to the court having jurisdiction of the offense."

Section 92. Section 46-10-202, MCA, is amended to read:

"46-10-202. Presentation of evidence. (1) The defendant may not enter a plea. The ~~justice~~ judge shall hear the evidence without unnecessary delay. All witnesses must be examined in the presence of the defendant. The defendant may cross-examine witnesses against ~~him~~ the defendant and may introduce evidence in ~~his~~ the defendant's own behalf.

(2) During the examination of ~~any~~ a witness or when the defendant is making a statement or testifying, the ~~justice~~ judge may, and on the request of the defendant or state shall, exclude all other witnesses. He The judge may also cause the witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

(3) An objection to evidence on the ground that it has been acquired by unlawful means is not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in 46-13-302."

Section 93. Section 46-10-203, MCA, is amended to read:

"46-10-203. Disposition of defendant. (1) If from the evidence it appears that there is probable cause to believe that an offense has been committed ~~by~~ and that the defendant committed it, the ~~justice~~ judge shall hold ~~him~~ the defendant to answer to the court having jurisdiction of the offense.

(2) ~~otherwise~~ If it appears from the evidence that there is insufficient probable cause to believe that an

offense has been committed or that the defendant committed it, the ~~justice~~ judge shall dismiss the complaint and discharge ~~him~~ the defendant. The discharge of the defendant may not preclude the state from instituting a subsequent prosecution for the same offense."

Section 94. Section 46-10-204, MCA, is amended to read:

"46-10-204. Record of preliminary examination. (1) The testimony of each witness~~, in cases of homicide, must be reduced to writing as a deposition by a court-appointed stenographer. In cases other than homicide, the testimony of each witness~~ must be taken by a court-appointed stenographer upon demand by the county attorney, the defendant, or the defendant's counsel.

(2) After concluding the proceeding, ~~if the justice~~ judge holds the defendant to answer a charge, ~~he~~ the judge shall transmit immediately to the clerk of the court having jurisdiction of the offense all papers in the proceeding and any bail taken by ~~him~~ the judge."

Section 95. Section 46-11-101, MCA, is amended to read:

"46-11-101. Methods of commencing prosecution. ~~When authorized by law, a~~ A prosecution may be commenced by:

(1) a complaint;

(2) an information following a preliminary examination or waiver thereof of a preliminary examination;

(3) an information after leave of court has been

granted; or

(4) an indictment upon a finding by a grand jury."

Section 96. Section 46-11-102, MCA, is amended to read:

"46-11-102. ~~When--given~~ Required methods ~~required~~. (1) All prosecutions of offenses ~~triable~~ charged in ~~the~~ a district ~~courts--shall~~ court must be by indictment or information.

(2) All other prosecutions of offenses ~~may~~ must be by complaint."

NEW SECTION. **Section 97.** Filing complaint. (1) When a complaint is presented to a court charging a person with the commission of an offense, the court shall examine the complainant and any affidavits, if filed, to determine whether a charge may be filed.

(2) If it appears from an affidavit filed with the charge or from testimony of the complainant that there is probable cause to believe that an offense has been committed and that the person against whom the charge is made has committed it, the court shall issue an arrest warrant.

NEW SECTION. **Section 98.** Amending complaint. A court may allow a complaint to be amended under the same circumstances and in the same manner as an information as provided in 46-11-103.

Section 99. Section 46-11-201, MCA, is amended to read:

"46-11-201. Leave to file information. (1) The ~~county~~ attorney prosecutor may apply directly to the district court for permission to file an information against a named defendant. If the defendant named is a district court judge, the prosecutor shall apply directly to the supreme court for leave to file the information.

(2) ~~The~~ An application must be by affidavit supported by ~~such~~ evidence as that the judge or chief justice may require. If it appears that there is probable cause to believe that an offense has been committed by the defendant, the judge or chief justice shall grant leave to file the information, otherwise the application ~~shall be~~ is denied.

~~(2)~~(3) When ~~there--has--been--granted~~ leave to file an information has been granted ~~against--the--defendant~~, a warrant or summons may issue for ~~his~~ the defendant's arrest or appearance ~~and-he-must-be-brought-before-the-court-unless-the-court-orders-otherwise~~.

(4) When leave is granted to file an information against a district court judge, the chief justice shall designate and direct a judge of the district court of another district to preside at the trial of the information and hear and determine all pleas and motions affecting the defendant under the information before and after judgment. All necessary records must be transferred to the clerk of the district court of the district in which the action arose."

Section 100. Section 46-11-403, MCA, is amended to read:

"46-11-403. Amending the information as to substance or form. (1) ~~(a) An~~ The court may allow an information ~~may~~ to be amended in matters of substance at any time, but not less than 5 days before trial, ~~with leave of court:~~

~~(b) When the prosecution seeks leave to amend an information as to a matter of substance, the prosecuting attorney shall file:~~

~~(i)~~ provided that a motion ~~for leave to amend stating~~ is filed in a timely manner, states the nature of the proposed amendment,;

~~(ii) a copy of the proposed amended information; and~~

~~(iii)~~ is accompanied by an affidavit ~~in compliance with 46-11-201(1),~~ stating facts ~~sufficient to~~ that show the existence of probable cause to support the charge as amended. A copy of the proposed amended information must be included with the motion to amend the information.

~~(c)~~(2) If ~~the motion is timely and the amended information is supported by probable cause,~~ the court ~~shall~~ grants leave to amend the information,;

~~(d) The~~ the defendant ~~shall~~ must be arraigned on the amended information without unreasonable delay;

~~(e) The defendant shall have~~ and must be given a reasonable period of time to prepare for trial on the amended information.

~~(2)~~(3) The court may permit an information to be amended as to form at any time before a verdict or finding is issued if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

~~(3) No charge may be dismissed because of a formal defect which does not tend to prejudice a substantial right of the defendant.~~"

Section 101. Section 46-11-203, MCA, is amended to read:

"46-11-203. Time for filing information. (1) After ~~the defendant has been examined and held to answer or has waived~~ a finding of probable cause following a preliminary examination or waiver of a preliminary examination ~~as provided in chapter 10~~ or after leave of court has been granted ~~as provided in 46-11-201 and 46-11-202,~~ the ~~county attorney must~~ prosecutor shall file within 30 days in the proper district court an information charging the defendant with the offense ~~for which he is held to answer~~ or any other offense ~~disclosed by the evidence~~ supported by probable cause. ~~If the county attorney fails to file the information within the time specified, he may be found guilty of contempt and may be prosecuted for neglect of duty.~~

(2) Unless good cause to the contrary is shown, the

court shall dismiss the prosecution if an information is not filed within 30 days as required in subsection (1)."

Section 102. Section 46-11-301, MCA, is amended to read:

"46-11-301. Summoning grand ~~juries----composition~~ jury. (1) A grand jury ~~must~~ may only be drawn and summoned when the district judge, in his discretion, considers a grand jury ~~necessary-and-shall--so--order~~ to be in the public interest and orders the grand jury to be drawn or summoned. The composition and drawing of a grand jury ~~shall~~ must be in accordance with the provisions of Title 3, chapter 15, part 6.

(2) The district judge may direct the selection of one or more alternate jurors, who shall sit as regular jurors before an indictment is found or a grand jury investigation is concluded. ~~If a~~ A member of the jury who becomes unable to perform ~~his~~ the juror's duty, ~~he~~ may be replaced by an alternate."

Section 103. Section 46-11-302, MCA, is amended to read:

"46-11-302. ~~Objections~~ Challenges to grand jury ~~and--to~~ or grand jurors. (1) The ~~state~~ county attorney or attorney general may challenge the panel of a grand jury on the ~~grounds~~ ground that the grand jury was not selected, drawn, or summoned according to law and may challenge an individual

juror on the ground that the juror is not legally qualified. Challenges must be made before the administration of the oath of the jurors, may be oral or in writing, and ~~shall~~ must be tried and decided by the court.

(2) At any time for cause shown, the district court may excuse or discharge a juror ~~or jurors~~ either temporarily or permanently, and in the latter event, the court may impanel another person ~~or persons~~ in place of the juror ~~or--jurors~~ discharged.

~~(2)~~(3) A motion to dismiss the indictment may be based on the ~~grounds~~ ground that the grand jury was not selected, drawn, or summoned according to law or that an individual juror was not legally qualified. An indictment ~~shall~~ may not be dismissed on the ground that one or more members ~~of--the grand-jury-were~~ are not legally qualified if it appears from the record kept pursuant to ~~46-11-303~~ [sections 105, 107, 108, 112], and this part that eight or more jurors, after deducting those not legally qualified, concurred in finding the indictment."

Section 104. Section 46-11-303, MCA, is amended to read:

"46-11-303. Foreman ~~---powers-and-duties~~. The district court shall appoint one of the jurors to be foreman. The foreman ~~shall have~~ has the power to administer oaths and or affirmations and shall sign all indictments. He The foreman

or another juror designated by ~~him~~ the foreman shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of court, but the record ~~shall~~ may not be made public except on order of the district court."

NEW SECTION. **Section 105.** Appointing special prosecutor. When the county attorney or attorney general is the subject of a grand jury investigation, the district court shall appoint a special prosecutor. If a special prosecutor is appointed, the county attorney's or attorney general's office may not participate in an official capacity, but staff members may appear as witnesses.

Section 106. Section 46-11-311, MCA, is amended to read:

"46-11-311. Charge ~~by--court~~ to grand jury. When the a grand jury is impaneled and sworn, it ~~shall~~ must be charged by the judge who summoned it. In ~~doing-so~~ making the charge, the district court shall ~~give--the--grand--jurors--such information-as-it-deems-proper-or--as--is--required--by--law~~ instruct the jury as to ~~their~~ its duties and ~~as-to-any charges-of-public-offenses-known-to-the-court-and-likely--to come--before--the--grand--jury~~ the matters that jurors may consider. The prosecutor may bring additional matters before the grand jury that are consistent with the original charge or that are developed during the proceedings."

NEW SECTION. **Section 107.** Closed hearing. Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a grand jury proceeding to be closed. This requirement may not affect a defendant's discovery rights after the filing of the indictment.

NEW SECTION. **Section 108.** Duties of grand jurors. The grand jury shall inquire into those matters as directed by the court summoning the jury and shall inquire into other matters as presented by the prosecutor.

Section 109. Section 46-11-313, MCA, is amended to read:

"46-11-313. Subpoena of witnesses. (1) A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the county attorney, by the foreman of the grand jury, or by the judge of the district court. ~~The--subpoena--may--be--directed-to-witnesses-in-the state-in-support-of-the-prosecution;-these--witnesses--whose testimony;--in--the-opinion-of-the-issuer;-is-material-in-an investigation--before--the--grand--jury;--and---such---other witnesses-as-the-grand-jury-may-direct.~~

(2) The fees and mileage of witnesses subpoenaed pursuant to this section must be the same as those for witnesses in criminal actions.

(3) All provisions relating to subpoenas in criminal

actions apply to subpoenas issued pursuant to this section, including the provisions of Title 46, chapter 15, part 1."

Section 110. Section 46-11-314, MCA, is amended to read:

"46-11-314. Reception of evidence. ~~(1)~~ In the investigation of a charge, the grand jury shall receive no other evidence than that given by witnesses produced and sworn before it or that furnished by legal documentary evidence or the deposition of a witness ~~in--the--cases mentioned-in-chapter-15,-part-2,-of-this-title.~~

~~(2)--The-grand-jury-is-not-required-to-hear-evidence-for the-defendant,-but-it-shall-weigh-all-the-evidence-submitted to-it.-If-it-has-reason-to-believe-other-evidence-within-its reach--will--explain--away--the--charge,--it-shall-order-the evidence-to-be-produced-and-for-that-purpose-may-require-the county-attorney-to-issue-process-for-witnesses.~~"

Section 111. Section 46-11-315, MCA, is amended to read:

"46-11-315. Advice and assistance to grand jury ----who may--be-present. (1) The grand jury may at all times ask the advice of the court--or the judge thereof,--the--attorney general,--or--the--county--attorney. Unless such advice is asked, the judge of-the--court--shall may not be present during the sessions of the grand jury.

(2) The county---attorney--or--the--attorney--general

prosecutor may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by the grand jury and may interrogate witnesses before the grand jury whenever ~~he--thinks~~ the prosecutor finds it necessary. ~~When--a-charge-against-or involving-the-county-attorney,-deputy--county--attorney,--or anyone--employed--by--or--connected--with--the-office-of-the county-attorney-is-being-investigated-by-the-grand-jury,-the county-attorney,-deputy-county-attorney,-or-all-or--any--one or--more--of--them--shall-not-be-allowed-to-be-present-in-an official-capacity-before-the-grand-jury-when-the--charge--is being-investigated.-They-or-he-shall-only-be-present-while-a witness--and--after--appearing--as-a-witness-shall-leave-the place-where-the-grand-jury-is-holding-session.~~

(3) ~~When-requested-to-do-so-by-the-grand--jury--of--any county,--the--attorney-general-or~~ Subject to the approval of the district court, the county attorney may employ a special ~~counsel~~ prosecutor, and investigators, interpreters, and experts at agreed-upon compensation to be first approved by the court ~~who-shall-investigate--and--present--the--evidence acquired-in-such-investigation-to-the-grand-jury.~~

~~(4)--The--grand--jury--or-county-attorney-may-require-by subpoena-the-attendance-of-any-person-before-the-grand--jury as interpreter,--While--his--services-are--necessary,--the interpreter may be present-at-the-examination-of-witnesses~~

before the grand jury. The compensation for the services of the interpreter constitutes a charge against the county and shall be fixed by the grand jury in an amount to be approved by the court. It shall be paid out of the county treasury on a warrant of the county auditor upon an order of the judge of the district court."

NEW SECTION. **Section 112.** Who may be present. The prosecutor, witnesses, interpreters, and a stenographer or operator of a recording device used for the purpose of taking the evidence may be present while the grand jury is in session. No person other than the jurors may be present while the grand jury is deliberating or voting.

Section 113. Section 46-11-316, MCA, is amended to read:

"46-11-316. Stenographer ------ transcript of testimony Recorded proceedings. (1) The grand jury may shall either appoint a stenographer to take in shorthand the testimony of witnesses, or the testimony may must be taken by a recording device, but the record so made shall must include the testimony of all witnesses on that particular investigation. The shorthand notes or the recordings and transcript of the same, if any, shall be delivered to and retained by the clerk of the district court.

(2) The stenographer and any typist who transcribes the stenographer's notes or recordings shall be sworn by the

foreman not to disclose any testimony or the names of any witnesses except when so ordered by the court.

(3) The stenographic reporter or operator of a recording device shall, within 30 days after an indictment has been found, certify and file with the clerk of the district court the shorthand notes or the recordings made and an original transcription of his shorthand transcript of the notes or recordings. and a copy thereof and as many additional copies as there are defendants. The reporter shall complete the certification and filing within 10 days after the indictment has been found unless the court for good cause makes an order extending the time. The clerk of the district court shall deliver the original of the transcript filed with him to the county attorney immediately upon his receipt thereof, retain one copy for use only by judges in proceedings relating to the indictment, and deliver a copy of the transcript to each defendant or his attorney.

(3) An unintentional failure of any recording to reproduce all or any portion of a proceeding may not affect the validity of the prosecution."

Section 114. Section 46-11-317, MCA, is amended to read:

"46-11-317. Secrecy of proceedings and -- disclosure. (1) Disclosure of matters occurring before the grand jury

other than its deliberations and the vote of any juror may be made to ~~the county---attorney~~ any prosecutor or investigator of this state and prosecutors or investigators from any other state or the federal government for use in the performance of ~~his~~ the prosecutor's or investigator's duty.

(2) ~~Otherwise---a~~ A grand juror, ~~attorney,~~ an interpreter, a stenographer, ~~or~~ an operator of a recording device, ~~or any~~ a typist who transcribes recorded testimony, or the prosecutor may not disclose matters occurring before the grand jury ~~only--when--so--directed--by--the--court preliminary-to-or-in-connection-with-a--judicial--proceeding or--when~~ except as otherwise permitted by Title 46. An obligation of secrecy may not be imposed on a person except in accordance with this section. A knowing violation of this section may be punishable as contempt of court.

(3) Disclosure otherwise prohibited by this section of matters occurring before the grand jury may be made:

(a) if directed by the district court prior to or in combination with a judicial proceeding;

(b) when permitted by the district court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury ~~under 46-11-302(2),~~; or

(c) when permitted by the district court, to a

defendant pursuant to a proper discovery motion ~~No obligation--of-secrecy-may-be-imposed-upon-any-person-except in-accordance-with-this-rule.~~

~~(2)--The-court-may-direct-that-an--indictment--shall--be kept--secret--until-the-defendant-is-in-custody-or-has-given bail,-and-no--person--shall--disclose--the--finding--of--the indictment--except--when--necessary--for--the--issuance--and execution-of-a-warrant-or-summons.~~"

Section 115. Section 46-11-318, MCA, is amended to read:

"46-11-318. ~~Discharging~~ Discharge of grand jury. When the grand jury certifies the completion of business before it and the district court concurs, ~~it shall~~ the grand jury must be discharged by the district court."

Section 116. Section 46-11-319, MCA, is amended to read:

"46-11-319. Expenses of grand jury. (1) ~~All~~ Except as provided in subsection (2), all expenses of the grand jury, including expenses for special ~~counsel--and~~ prosecutors, experts, investigators, and interpreters, if any, ~~shall~~ must be paid by the treasurer of the county out of the general fund of the county~~--except-as-provided--in--subsection--(2),~~ upon warrants drawn by the county auditor or by the clerk of the district court upon the a written order of the judge of the district court of the county.

(2) If a the county has a district court fund, all expenses of a grand jury must be paid out of such that fund.

(3) Subject to the procedures established under 3-5-902(1) by law, the state shall reimburse the county court for juror and witness fees as-provided-in-3-5-903 and for witness expenses as-provided-in--46-15-104. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in such that fund."

Section 117. Section 46-11-331, MCA, is amended to read:

"46-11-331. Finding an indictment. (1) The grand jury shall find an indictment when all the evidence before it taken together,-if-unexplained-or-uncontradicted, would in its judgment warrant a conviction by a trial jury.

(2)--An indictment cannot may be found without only upon the concurrence of at least eight grand jurors. When-so found,--it--must--be--endorsed,--"a--true--bill",--and---the endorsement-must-be-signed-by-the-foreman-of-the-grand-jury.

(2) If a complaint or information is pending against the defendant and eight jurors do not concur in finding an indictment, the foreman shall report the decision to the district court judge."

Section 118. Section 46-11-332, MCA, is amended to

read:

"46-11-332. Presenting the indictment. (1) An indictment, when found by the grand jury, must be signed by and presented by their the foreman in their presence to the district court in the presence of the grand jury and must be filed with the clerk. The district court shall then issue a warrant or summons for the defendant.

(2) When-an-indictment--is--filed--against--a--district court--judge,-it-must-be-transmitted-directly-to-the-supreme court,-which-shall-thereupon-designate-and-direct-a-judge-of the-district-court-of-another-district--to--preside--at--the trial--of--such--indictment-and-hear-and-determine-all-pleas and-motions-affecting-the-defendant--thereunder--before--and after--judgment. If a complaint or information is pending against the defendant and eight jurors do not concur in finding an indictment, the foreman shall report the decision to the district court judge."

Section 119. Section 46-11-401, MCA, is amended to read:

"46-11-401. Form of charge. (1) A The charge shall:

(a) must be in writing and in the name of the state of Montana or in the name-of-a appropriate municipality if--a violation-of-a-municipal-ordinance-is-charged;

(b) and must specify the name of the district court in which the charge is filed.;-and

~~(c)--charge-the-commission-of-an-offense-by:~~

~~(i)--stating~~ The charge must be a plain, concise, and definite statement of the offense charged, including the name of the offense.~~,~~

~~(ii)-citing-in-customary--form--the--statute,--rule,--or other--provision--of--law--which-the-defendant-is-alleged-to have-violated;~~

~~(iii)-stating-the--facts--constituting--the--offense--in ordinary--and--concise--language--and--in--such-manner-as-to enable-a-person-of-common--understanding--to--know--what--is intended;~~

~~(iv)-stating~~ whether the offense is a misdemeanor or felony, the name of the person charged, and the time and place of the offense as definitely as can be done; and determined

~~(v)--stating-the-name-of-the-accused,-if-known,-and,--if not---known,---designating---the--accused--by--any--name--or description-by-which-he-can-be--identified--with--reasonable certainty.~~ The charge must state for each count the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.

(2) If the charge is by information or indictment, it ~~shall~~ must include endorsed thereon on the information or indictment the names of the witnesses for the state, if known.

(3) If the charge is by complaint, it ~~shall~~ must be signed on oath by a person having knowledge of the facts or by the ~~county attorney;~~ prosecutor.

(4) ~~If~~ If the charge is by information, it ~~shall~~ must be signed by the ~~county attorney or--by--his--deputy;--if~~ prosecutor. If the charge is by indictment, it ~~shall~~ must be signed by the foreman of the grand jury.

(5) The district court, on motion of the defendant, may strike surplusage from the indictment or information.

(6) A charge may not be dismissed because of a formal defect that does not tend to prejudice a substantial right of the defendant."

Section 120. Section 46-11-404, MCA, is amended to read:

"46-11-404. Joinder ~~and--severance~~ of offenses and defendants. (1) ~~An-indictment,-information,-or-complaint-may charge-two~~ Two or more ~~different~~ offenses ~~connected-together in-their-commission,~~ or different statements of the same ~~offense,-or-two-or-more-different-offenses-of-the-same-class under--separate--counts~~ may be charged in the same charging document in a separate count, or alternatively, if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same transactions connected together or constituting parts

of a common scheme or plan. ~~If--two--or--more--indictments,--informations,--or--complaints-are-filed-in-such-cases-in-the-same-court,-the-court-may-order--them--to--be--consolidated.~~ Allegations made in one count may be incorporated by reference in another count.

(2) If two or more charging documents are filed in the case, the court may order them to be consolidated.

(3) The prosecution is not required to elect between the different offenses ~~or--counts~~ set forth in the ~~indictment,-information,-or--complaint,~~ charging document, and the defendant may be convicted of any number of the offenses charged except as provided in 46-11-502. Each offense of which the defendant is convicted must be stated in the verdict or the finding of the court.

~~(2)--The-court-in-which-the--case--is--triable,--in--the--interests--of--justice-and-for-good-cause-shown,-may,-in-its-discretion,-order-that-the-different-offenses-or-counts--set-forth--in-the-indictment,-information,-or-complaint-be-tried-separately-or-divided-into-two-or-more-groups--and--each--of-the--groups--tried--separately.--An-acquittal-of-one-or-more-counts-shall-not-be-considered-an--acquittal--of--any--other-count.~~

~~(3)~~ (4) Two or more defendants may be charged in the same indictment, or information, or complaint if they are alleged to have participated in the same ~~series-of-acts-or-transactions~~ transaction constituting an offense or offenses. ~~Such~~ The defendants may be charged in one or more counts together or separately, and all of the defendants need not be charged in each count.

~~(4)--If--it--appears--that--a--defendant-or-the-state-is-prejudiced--by--a--joinder--of---related---prosecutions---or-defendants--in--a--single--charge--or-by-joinder-of-separate-charges--or--defendants--for--trial,--the--court--may--order-separate-trials,-grant-a-severance-of-defendants,-or-provide-any-other-relief-as-justice-may-require.~~"

Section 121. Section 46-11-502, MCA, is amended to read:

"46-11-502. ~~Prosecution-when-conduct--constitutes--more-than--one--offense~~ Multiple charges. (1) When the same transaction may establish the commission of more than one offense, a person charged with such the conduct may be prosecuted for each such offense.

(2) He A defendant may not, however, be convicted of more than one offense if:

~~(1)~~(a) one offense is included in the other;

~~(2)~~(b) one offense consists only of a conspiracy or other form of preparation to commit the other;

~~(3)~~(c) inconsistent findings of fact are required to establish the commission of the offenses;

~~(4)~~(d) the offenses differ only in that one is defined

to prohibit a ~~designated-kind-of-conduct-generally-and-the other-to-prohibit-a~~ specific instance of ~~such~~ the conduct; or

~~(5)~~(e) the offense is defined to prohibit a continuing course of conduct and the defendant's course of conduct was interrupted, unless the law provides that the specific periods of ~~such~~ the conduct constitute separate offenses."

Section 122. Section 46-11-503, MCA, is amended to read:

"46-11-503. ~~When-prosecution~~ Prosecution based on same transaction barred by former prosecution. (1) ~~If-the~~ When two or more offenses were are known to the ~~attorney prosecuting-upon-sufficient-evidence-to-justify--the--filing of-an-information-or-the-issuance-of-a-warrant-of-arrest-and were~~ prosecutor, are supported by probable cause, and are consummated prior to the original charge and ~~if---the~~ jurisdiction and venue of the ~~several~~ offenses lie in a single court, a prosecution ~~based-upon-the-same--transaction as-a-former-prosecution~~ is barred ~~by-such-former-prosecution under-the-following-circumstances~~ if:

~~(1)~~(a) ~~The~~ the former prosecution resulted in an acquittal. There is an acquittal whenever the prosecution results in a finding of not guilty by the trier of fact or in a determination that there is insufficient evidence to warrant a conviction. A finding of guilty of a lesser

included offense ~~than-the--offense--charged--which~~ that is subsequently set aside is an acquittal of the greater ~~inclusive~~ offense that was charged.

~~(2)~~(b) ~~The~~ the former prosecution ~~was-terminated,-after a-complaint-had-been-filed-on-a-misdemeanor-charge-or--after an--information--had--been-filed-or-an-indictment-found-on-a felony--charge,--by--a--final--order--of--judgment--for--the defendant-which~~ resulted in a conviction that has not been set aside, reversed, or vacated; ~~and--which-necessarily required-a-determination-inconsistent-with-a-fact-or-a-legal proposition-that-must-be-established-for-conviction--of--the offense.~~

~~(3)--The--former--prosecution--resulted-in-a-conviction. There--has--been--a--conviction--whenever--the---prosecution resulted-in:~~

~~(a)--a---judgment--of--conviction--which--has--not--been reversed-or-vacated;~~

~~(b)--a-verdict-of-guilty-which-has-not--been--set--aside and--which--is--capable-of-supporting-a-judgment,-so-long-as failure-to-enter-judgment-was-for--a--reason--other--than--a motion-of-the-defendant;-or~~

~~(c)--a--plea-of-guilty-accepted-by-the-court,-so-long-as failure-to-enter-judgment-was-for--a--reason--other--than--a motion-of-the-defendant.~~

~~(4)--The--former--prosecution-was-improperly-terminated.~~

~~Except as provided in this subsection (4), there is an improper termination of a prosecution whenever the termination is~~

(c) after a charge had been filed, the prosecution was terminated by a final order or judgment for the defendant that has not been set aside, reversed, or vacated; or

(d) the former prosecution was terminated for reasons not amounting to an acquittal and takes place:

(i) in a jury trial, after the first witness is sworn but before a verdict~~,~~ is returned; or

(ii) in a nonjury trial, after the first witness is sworn but before a verdict is returned.

(2) ~~Termination under either of the following circumstances is not improper~~ A prosecution based upon the same transaction as a former prosecution is not barred under subsection (1)(d) when:

(a) ~~The~~ the defendant consents to the termination or waives his right to object to the termination~~,~~; or

(b) ~~The~~ the trial court~~,~~ ~~in the exercise of its discretion,~~ finds that the termination is necessary because:

(i) it is physically impossible to proceed with the trial in conformity with law;

(ii) there is a legal defect in the proceedings ~~which~~ that would make any judgment entered upon a verdict reversible as a matter of law;

(iii) prejudicial conduct ~~in or outside the courtroom~~ makes it impossible to proceed with the trial without manifest injustice to either the defendant or the state;

(iv) the jury is unable to agree upon a verdict; or

(v) false statements of a juror on voir dire prevent a fair trial."

Section 123. Section 46-11-504, MCA, is amended to read:

"46-11-504. Former prosecution in another jurisdiction ~~when a bar~~. When conduct constitutes an offense within the concurrent jurisdiction of this state and of the United States or another state or of two courts of separate, overlapping, or concurrent jurisdiction in this state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in this state under the ~~following~~ same circumstances barring further prosecution in this state if:

(1) ~~The~~ the first prosecution resulted in an acquittal or in a conviction ~~as defined in 46-11-503~~ and the subsequent prosecution is based on an offense arising out of the same transaction~~,~~; or

(2) ~~The~~ the former prosecution was terminated, after the ~~complaint~~ charge had been filed ~~on a misdemeanor charge or after the information had been filed or the indictment found on a felony~~ charge, by an acquittal or by a final

order or judgment for the defendant ~~which~~ that has not been set aside, reversed, or vacated; and the acquittal, final order, or judgment necessarily required a determination inconsistent with a fact ~~which~~ that must be established for conviction of the offense for which the defendant is subsequently prosecuted."

Section 124. Section 46-11-505, MCA, is amended to read:

"46-11-505. ~~When-former~~ Former prosecution not a bar. A prosecution is not a bar ~~within-the-meaning-of-46-11-503-and-46-11-504--under--any--one--or---more---of---the---following circumstances~~ if:

(1) ~~The~~ the former prosecution was before a court ~~which~~ that lacked jurisdiction over the defendant or the offense; or

~~(2) The former---prosecution---was--procured--by--the defendant-without-the-knowledge-of--the--proper--prosecuting officer--or--with-the-purpose-of-avoiding-the-sentence-which might-otherwise-be-imposed;~~

~~(3)~~--~~The~~ the former prosecution resulted in a judgment of conviction ~~which~~ that was held invalid in a postconviction hearing."

NEW SECTION. **Section 125.** Pretrial proceedings -- exclusion of public and sealing of records. (1) Except as provided in this section, pretrial proceedings and records

of those proceedings are open to the public. If, at the pretrial proceedings, testimony or evidence is presented that is likely to threaten the fairness of a trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation of the news media in delaying dissemination of potentially prejudicial information until the impaneling of the jury or until an earlier time consistent with the administration of justice.

(2) The defendant may move that all or part of the proceeding be closed to the public, or with the consent of the defendant, the judge may take action on the judge's own motion.

(3) The judge may close a preliminary hearing, bail hearing, or any other pretrial proceeding, including a motion to suppress, and may seal the record only if:

(a) the dissemination of information from the pretrial proceeding and its record would create a clear and present danger to the fairness of the trial; and

(b) the prejudicial effect of the information on trial fairness cannot be avoided by any reasonable alternative means.

(4) Whenever all or part of any pretrial proceeding is held in chambers or otherwise closed to the public under this section, a complete record must be kept and made available to the public following the completion of the

trial or earlier if consistent with trial fairness.

(5) When the judge determines that all or part of a document filed in support of a charge or warrant would present a clear and present danger to the defendant's right to a fair trial, the document or portion of the document must be sealed until the trial is completed unless the document or portion of the document must be used for trial fairness.

NEW SECTION. **Section 126.** Misdemeanor offenses. In all cases in which the defendant is charged with a misdemeanor offense, the defendant may appear by counsel only, although the court may require the personal attendance of the defendant at any time.

NEW SECTION. **Section 127.** Felony offenses. (1) Except as otherwise provided in Title 46, the defendant in all cases in which a felony is charged must be present at the initial appearance, arraignment, entry of plea, preliminary examination, trial, and sentencing or when otherwise required by the court.

(2) The defendant may be present at all other proceedings.

(3) The presence of the defendant is not required before the supreme court.

NEW SECTION. **Section 128.** Absence of defendant from trial. (1) In a misdemeanor case, if the defendant fails to

appear in person, either at the time set for the trial or at any time during the course of the trial and if the defendant's counsel is authorized to act on the defendant's behalf, the court shall proceed with the trial unless good cause for continuance exists.

(2) If the defendant's counsel is not authorized to act on the defendant's behalf as provided in subsection (1) or if the defendant is not represented by counsel, the court, in its discretion, may do one or more of the following:

(a) order a continuance;

(b) order bail forfeited;

(c) issue a bench warrant; or

(d) proceed with the trial after finding that the defendant had knowledge of the trial date and is voluntarily absent.

(3) After the trial of a felony offense has commenced in the defendant's presence, the absence of the defendant during the trial may not prevent the trial from continuing up to and including the return of a verdict if the defendant:

(a) has been removed from the courtroom for disruptive behavior after receiving a warning that removal will result if the defendant persists in conduct that is so disruptive that the trial cannot be carried on with the defendant in the courtroom; or

(b) is voluntarily absent and the offense is not one that is punishable by death.

(4) Nothing in this section limits the right of the court to order the defendant to be personally present at the trial for purposes of identification unless defense counsel stipulates to the issue of identity.

NEW SECTION. **Section 129.** Absence of defendant on receiving verdict or at sentencing. (1) In all misdemeanor cases, the verdict may be returned and the sentence imposed without the defendant being present.

(2) In all felony cases, the defendant shall appear in person when the verdict is returned or the sentence is imposed unless, after the exercise of due diligence to procure the defendant's presence, the court finds that it is in the interest of justice that the verdict be returned and the sentence be pronounced in the defendant's absence.

NEW SECTION. **Section 130.** Pretrial diversion. (1) The prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(a) that the defendant may not commit any offense;

(b) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant

is based;

(c) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(d) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or

(e) any other reasonable conditions.

(2) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.

(3) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(4) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

Section 131. Section 46-12-102, MCA, is amended to read:

"46-12-102. Place of arraignment. The defendant shall must be arraigned in the court ~~in which the indictment, information, or complaint is filed unless before arraignment~~

~~the cause has been removed to another court, in which case he shall be arraigned in that court~~ that has trial jurisdiction of the charge."

Section 132. Section 46-12-201, MCA, is amended to read:

"46-12-201. ~~General rules of procedure for~~ Manner of conducting arraignment. (1) ~~The arraignment in any court in this state must~~ Arraignment must be conducted ~~in the following manner:~~

~~(1) The arraignment must be~~ in open court and must consist of reading the charge to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead to the charge. The defendant must be given a copy of the charging document before being called upon to plead.

(2) The court ~~must~~ shall inquire of the defendant or ~~his~~ the defendant's counsel the defendant's true name, and if the defendant's true name ~~be~~ is given as any other than that used in the charge, the court ~~must~~ shall order the defendant's name to be substituted for the name under which ~~he~~ the defendant is charged. ~~The subsequent proceedings must be conducted with the defendant charged under that name, but in the discretion of the court, the defendant may also be referred to by the name by which he was first charged.~~

(3) The court ~~must~~ shall determine whether the

defendant is under any disability ~~which~~ that would prevent the court, in its discretion, from proceeding with the arraignment. The arraignment may be continued until ~~such time as~~ the court determines the defendant is able to proceed."

Section 133. Section 46-12-204, MCA, is amended to read:

"46-12-204. ~~The plea bargains~~ Plea alternatives. (1) ~~The~~ A defendant ~~shall enter a plea of~~ may plead guilty or not guilty ~~to the indictment, information, or complaint.~~ If ~~the~~ a defendant refuses to plead ~~to the indictment, information, or complaint,~~ or if a defendant corporation fails to appear, the court shall enter a plea of not guilty ~~must be entered.~~

(2) The court may ~~refuse to~~ not accept a plea of guilty ~~and shall not accept the plea of guilty~~ without first determining that the plea is voluntary ~~with an understanding of the charge~~ and not the result of force or threats or of promises apart from the plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty results from prior discussions between the prosecutor and the defendant or the defendant's attorney.

(3) ~~(a) A plea bargain agreement is an agreement~~ between a defendant and a prosecutor that in exchange for a particular plea the prosecutor will recommend to the court a

particular sentence. A judge may not participate in the making of, and is not bound by, a plea bargain agreement. If a judge does not impose a sentence recommended by a prosecutor pursuant to a plea bargain agreement, the judge is not required to allow the defendant to withdraw a plea of guilty.

(b) Before a judge accepts a plea of guilty, he must advise the defendant:

(i) of all the provisions of subsection (3)(a);

(ii) of the punishment as set forth by statute for the crime charged;

(iii) that prior to entering a plea of guilty, the defendant and his counsel should have carefully reviewed Title 46, chapter 18, and considered the most severe sentence that can be imposed for a particular crime; and

(iv) that the judge may impose any sentence allowed by law. With the approval of the court and the consent of the prosecutor, a defendant may enter a plea of guilty, reserving the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant must be allowed to withdraw the plea."

Section 134. Section 46-12-202, MCA, is amended to read:

"46-12-202. Court Advice to advise defendant of his

rights and the charges. (1) The defendant shall be advised by Before accepting a plea of guilty, the court as follows shall determine that the defendant understands the following:

(1) (a) of the nature of the crime charged against him; charge for which the plea is offered;

(b) of the punishment as set forth by statute for the crime charged;

(c) if the defendant intends to enter into a plea bargain agreement:

(i) that under 46-12-204, the court is not bound by such agreements;

(ii) that under 46-12-204, if the court does not impose the sentence recommended by the prosecution pursuant to a plea agreement, the court is not required to allow the defendant to withdraw a plea of guilty;

(iii) that criminal sentencing is governed by Title 46, chapter 18; and

(iv) that the defendant and his counsel should carefully review Title 46, chapter 18, and consider the most severe sentence that can be imposed for a particular crime;

(d) if the defendant appears for arraignment without counsel, of his right to counsel and of his right to assigned counsel if he is unable to employ counsel. If counsel is or has been waived by the defendant, the court

shall ascertain if the waiver is or was voluntary before proceeding:

(e) of the time prescribed by statute to enter a plea;

(f) of his right to secure bail to release him from custody;

(2) The court, or the clerk or county attorney under its direction, must:

(a) deliver to the defendant a true copy of the indictment, information, or complaint, including the endorsements thereon and the list of witnesses when required;

(b) read the indictment, information, or complaint to the defendant unless the defendant or his counsel waives such reading; and

(c) ask him whether he pleads guilty or not guilty to the indictment, information, or complaint.

(b) the mandatory minimum penalty provided by law, if any;

(c) the maximum penalty provided by law, including the effect of any penalty enhancement provision or special parole restriction; and

(d) when applicable, the requirement that the court may also order the defendant to make restitution of the costs and assessments provided by law;

(2) if the defendant is not represented by an attorney,

the fact that he has the right to be represented by an attorney at every stage of the proceeding against him and that, if necessary, one will be appointed to represent the defendant;

(3) that the defendant has the right:

(a) to plead not guilty or to persist in that plea if it has already been made;

(b) to be tried by a jury and at the trial has the right to the assistance of counsel;

(c) to confront and cross-examine witnesses against the defendant; and

(d) not to be compelled to reveal personally incriminating information;

(4) that if the defendant pleads guilty in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted pursuant to [section 135]; and

(5) that if the defendant's plea of guilty is accepted by the courts, there will not be a further trial of any kind, so that by pleading guilty the defendant waives the right to a trial."

NEW SECTION. **Section 135.** Plea agreement procedure. (1) The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions

with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

(a) move for dismissal of other charges;

(b) agree that a specific sentence is the appropriate disposition of the case; or

(c) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding upon the court.

(2) If a plea agreement has been reached by the parties, the court shall, on the record, require a disclosure of the agreement in open court or, on a showing of good cause in camera, at the time the plea is offered. If the agreement is of the type specified in subsection (1)(a) or (1)(b), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subsection (1)(c), the court shall advise the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

(3) If the court accepts a plea agreement, the court

shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact and advise the defendant that the court is not bound by the plea agreement, afford the defendant an opportunity to withdraw the plea, and advise the defendant that if the defendant persists in the guilty plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

NEW SECTION. **Section 136.** Determining accuracy of plea. (1) The court may not accept a guilty plea without determining that there is a factual basis for the plea in charges of felonies or misdemeanors resulting in incarceration.

(2) A defendant who is unwilling to admit to any element of the offense that would provide a factual basis for a plea of guilty may, with the consent of the court, enter a plea of guilty to the offense if the defendant considers the plea to be in the defendant's best interest and if a factual basis exists for the plea.

Section 137. Section 46-12-206, MCA, is amended to read:

"46-12-206. ~~Irregularity of arraignment~~ Harmless error.

No--irregularity--in-the-arraignment-which Any variance from the procedure required by [section 135] that does not affect the substantial rights of the defendant shall affect--the validity--of--any--proceeding--in-the-cause-if-the-defendant pleads-to-the-charge-or-proceeds-to-trial-without--objecting to-such-irregularity must be disregarded."

Section 138. Section 46-15-322, MCA, is amended to read:

"46-15-322. Disclosure by prosecution. (1) Upon arraignment--in--district-court-or-at-such-later-time-as-the court-may-for-good--cause--permit request, the prosecutor shall make available to the defendant for examination and reproduction the following material and information within his the prosecutor's possession or control:

(a) a--list-of the names, and addresses, and statements of all persons whom the prosecutor intends-to may call as witnesses in the case-in-chief,-together-with-their-relevant written-or-recorded-statements;

(b) all written or oral statements of the accused defendant and of any person who will be tried with him the defendant;

(c) the--names--and--addresses all written reports or statements of experts who have personally examined the accused defendant or any evidence in the particular case, together with the results of physical examinations,

scientific tests, experiments, or comparisons,-including-all written--reports--or--statements--made-by-them-in-connection with-the-particular-case;

(d) a--list--or--copies--of all papers, documents, photographs, or tangible objects that the prosecutor will may use at trial or that were obtained from or purportedly belong to the accused defendant; and

(e) all material or information that tends to mitigate or negate the accused's defendant's guilt as to the offense charged or that would tend to reduce his-punishment-therefor the defendant's potential sentence.

(2) At the same time, the prosecutor shall inform the defendant of, and make available to the defendant for examination and reproduction, any written or recorded material or information within his the prosecutor's possession-or control regarding:

(a) whether there has been any electronic surveillance of any conversations to which the accused defendant was a party;

(b) whether a-search-warrant an investigative subpoena has been executed in connection with the case; and

(c) whether the case has involved an informant, and, if so, his the informant's identity if the defendant is entitled to know either or both of these facts under Rule 502 of the Montana Rules of Evidence and-46-15-324(3).

(3) ~~The prosecutor, upon written request, shall make available to the defendant for examination, testing, and reproduction any specified items contained in the list submitted under subsection (1)(d).~~ The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under ~~this section~~ subsection (1)(d).

(4) The prosecutor's obligation of disclosure extends to material and information in the possession or control of members of ~~his~~ the prosecutor's staff and of any other persons who have participated in the investigation or evaluation of the case.

(5) Upon motion ~~of the defendant~~ showing that ~~he~~ the defendant has substantial need in the preparation of ~~his~~ the case for additional material or information not otherwise provided for and that ~~he~~ the defendant is unable, without undue hardship, to obtain the substantial equivalent by other means, the court, in its discretion, may order any person to make it available to ~~him~~ the defendant. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The prosecutor may not be required to prepare or disclose summaries of witnesses' testimony.

(6) The prosecutor shall furnish to the defendant no

later than 5 days before trial or at ~~such~~ a later time as the court may for good cause permit, together with their ~~relevant written or recorded~~ statements, a list of the names and addresses of all persons whom ~~he~~ the prosecutor intends to call as rebuttal witnesses to evidence of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity, ~~or good character~~ or the defense that the ~~accused~~ defendant did not have a particular state of mind that is an element of the offense charged."

Section 139. Section 46-15-323, MCA, is amended to read:

"46-15-323. Disclosure by ~~accused~~ defendant. (1) At any time after the filing in district court of an indictment or information, the ~~accused~~ defendant, in connection with the particular crime ~~with which he is~~ charged, shall upon written request of the prosecutor and ~~for good cause shown~~ approval of the court:

(a) appear in a ~~line-up~~ lineup;

(b) speak for identification by witnesses;

(c) be fingerprinted, palm printed, footprinted, or voiceprinted;

(d) pose for photographs not involving reenactment of an event;

(e) try on clothing;

(f) permit the taking of samples of his hair, blood, saliva, urine, or other specified materials that involve no unreasonable bodily intrusions ~~of-his-body~~;

(g) provide ~~specimens-of-his~~ handwriting samples; or

(h) submit to a reasonable physical or medical inspection ~~of-his-body~~; however, ~~such~~ the inspection does not include psychiatric or psychological examination.

(2) ~~The--accused-is-entitled-to-the-presence-of-counsel at-the-taking-of-any-evidence-pursuant--to--subsection--(1). Subsection--(1)--supplements--and--does--not-limit-any-other procedures-established-by-law.~~

~~(3)~~ Within ~~30~~ 10 days after ~~arraignment~~ the omnibus hearing in district court or at ~~such~~ a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of ~~his~~ the defendant's intention to introduce evidence at trial of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity, ~~or the defense that~~

(3) Within 10 days after receiving a report of examination pursuant to 46-15-327 or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of the defense that due to a mental disease or defect, the ~~accused~~ defendant did

not have a particular state of mind that is an ~~essential~~ element of the offense charged.

(4) The notice must specify for each defense the ~~names~~ and addresses of the persons ~~that-will-be-called~~, other than the defendant, whom the defendant may call as witnesses ~~at trial~~ in support of the defense, together with all written reports or statements made by them concerning the results of physical examinations, scientific tests, experiments, or comparisons.

(5) Prior to trial the defendant ~~shall~~ may, upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses and disclose their reports or statements as required by this section. After the trial commences, no witnesses may be called by the defendant in support of these defenses unless the name of the witness is included on the list and the witness's report or statement has been disclosed as required by this section, except for good cause shown. ~~Any--evidence--that--reasonably--becomes available--after--the--initial--30-days-shall-be-admitted-if 46-15-327-is-complied-with.~~

~~(4)~~(6) ~~Simultaneously--with--the--notice--of---defenses submitted--under--subsection--(3)~~ Within 10 days after the omnibus hearing in district court or at a later time as the court may for good cause permit, the defendant shall make available to the prosecutor for testing, examination, or

reproduction:

(a) the names, and addresses, and statements of all persons, other than the accused defendant, whom he the defendant will may call as witnesses at-trial in the defense case-in-chief, together with all their statements made-by them-in-connection-with-the-particular-case;

(b) the names and addresses of experts whom he the defendant will may call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by them these experts in connection with the particular case; and

(c) a-list-of all papers, documents, photographs, and other tangible objects that he-will the defendant may use at trial.

(5)(7) The defendant's obligation under this section extends to material and information within the possession or control of the defendant, or--his--attorneys--and--agents defense counsel, and defense counsel's staff or investigators.

(6)(8) Upon motion of the prosecutor showing that he the prosecutor has substantial need in the preparation of his the case for additional material or information not otherwise provided for, that he the prosecutor is unable, without undue hardship, to obtain the substantial equivalent

by other means, and that disclosure thereof of the material or information will not violate the accused's defendant's constitutional rights, the court, in its discretion, may order any person to make such the material or information available to him the prosecutor. The court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The defense counsel may not be required to prepare or disclose summaries of witnesses' testimony."

Section 140. Section 46-15-324, MCA, is amended to read:

"46-15-324. Materials not subject to disclosure. (1) Except as provided in subsection--(2) this section, disclosure is not required for the superseded notes or work product of the prosecuting or defense attorney.

(2) If exculpatory information is contained in the superseded notes or work product of the prosecution, that information must be disclosed.

(3)--Disclosure--of--the-existence-of-an-informant-or-of the-identity-of-an-informant--who--will--not--be--called--to te:tify-is-not-required-if:

(a)--disclosure--would-result-in-substantial-risk-to-the informant-or-to-his-operational-effectiveness;-and

(b)--the-failure--to--disclose--will--not--infringe--the constitutional-rights-of-the-accused;"

Section 141. Section 46-15-325, MCA, is amended to read:

"**46-15-325. Failure to call a witness or raise a defense.** The fact that a ~~witness's~~ witness's name is on a list furnished pursuant to ~~46-15-321 through 46-15-329~~ this part but the witness does not testify or that a matter contained in a pretrial notice is not raised may not be commented upon at trial unless the court, on motion of a party, allows ~~such~~ comment after finding that the inclusion of the ~~witness's~~ witness's name or the pretrial notice constituted an abuse of the applicable disclosure requirement or that other good cause is shown."

Section 142. Section 46-15-327, MCA, is amended to read:

"**46-15-327. Continuing duty to disclose.** If at any time after a disclosure has been made any party discovers additional information or material that would be subject to disclosure had it been known at the time of disclosure, ~~such~~ the party shall promptly notify all other parties of the existence of the additional information or material and make an appropriate disclosure."

NEW SECTION. **Section 143.** Investigation not to be impeded. Except as to matters to which discovery is restricted and except as to the defendant's counsel advising the defendant, a party or agent of a party may not

discourage or obstruct communication between any person and any party or otherwise obstruct a party's investigation of the case.

Section 144. Section 46-15-328, MCA, is amended to read:

"**46-15-328. Excision and protective orders.** (1) Upon a motion of any party showing good cause, the court may at any time order that any disclosure ~~of the identity of any witness be deferred for any reasonable period of time, not to extend beyond 5 days prior to the date set for trial, or that any other disclosures required by 46-15-321 through 46-15-329 be denied,~~ deferred, or regulated when it finds:

(a) that the disclosure would result in a risk or harm outweighing any usefulness of the unrestricted disclosure to any party; and

(b) that the risk cannot be eliminated by a less substantial restriction of discovery rights.

(2) Whenever the court finds, on motion of any party, that only a portion of a document or other material is discoverable ~~under 46-15-321 through 46-15-329~~, it may authorize the party disclosing it to excise that portion of the material ~~which~~ that is nondiscoverable and disclose the remainder.

(3) On motion of the party seeking a protective or excision order or in submitting for the court's

determination the discoverability of any material or information, the court may permit ~~him~~ that party to present the material or information for the inspection of the judge alone. Counsel for all other parties are entitled to be present when ~~such~~ the presentation is made.

(4) If the court enters an order that any material or any portion ~~thereof~~ of the material is not discoverable ~~under-46-15-321-through-46-15-329~~, the entire text of the material must be sealed and preserved in the record in the event of an appeal."

Section 145. Section 46-15-329, MCA, is amended to read:

"46-15-329. Sanctions. If at any time during the course of the proceeding it is brought to the attention of the court that a party has failed to comply with any of the provisions of ~~46-15-321-through-46-15-329~~ this part or any order issued pursuant to ~~46-15-321-through-46-15-329~~ this part, the court may impose any sanction that it finds just under the circumstances, including but not limited to:

(1) ordering disclosure of the information not previously disclosed;

(2) granting a continuance;

(3) holding a witness, party, or counsel in contempt for an intentional violation;

(4) precluding a party from calling a witness, offering

evidence, or raising a defense not disclosed; or

(5) declaring a mistrial when necessary to prevent a miscarriage of justice."

Section 146. Section 46-15-331, MCA, is amended to read:

"46-15-331. Compelling testimony or production of evidence -- immunity. (1) Before or during trial in any judicial proceeding, a ~~justice-of-the-supreme-court-or~~ judge of the district court, upon request by the ~~attorney~~ prosecuting prosecutor or defense counsel ~~for-the-defense~~, may require a person to answer any question or produce any evidence ~~that--may--incriminate-him~~, even though personally incriminating, following a grant of immunity.

(2) If a person is required to give testimony or produce evidence in accordance with this section in any investigation or proceeding, no compelled testimony or evidence ~~or-any-information-directly-or--indirectly--derived from--such-testimony-or-evidence~~ may not be used against the witness in any criminal prosecution.

(3) Nothing in this section prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if ~~the-prosecutor--determines~~, in ~~his~~ the prosecutor's sole discretion, it is determined that the ends of justice would be served ~~thereby~~.

(4) Immunity may not extend to prosecution or punishment for false statements given in any testimony required under this section."

Section 147. Section 46-15-201, MCA, is amended to read:

"46-15-201. When depositions may be taken. (1) ~~If~~ In felony cases, a deposition may be taken if it appears that a prospective witness:

(a) ~~may--be~~ is likely to be either unable to attend or otherwise prevented from attending a trial or hearing;

(b) ~~or-is-or-may-become-a-nonresident-of~~ is likely to be absent from the state at the time of the trial or hearing; or

(c) is unwilling to provide relevant information to a requesting party and ~~that--his~~ the witness's testimony is material and ~~that-it-is~~ necessary ~~to-take-his-deposition~~ in order to prevent a failure of justice~~,--the~~. The district court shall, ~~at-any-time-after-the--preliminary--hearing--or the--filing--of--the-indictment-or-the-information,-may~~ upon motion of any party and proper notice, ~~to-the-parties~~ order that ~~his~~ the testimony of the witness be taken by deposition and that any designated books, papers, documents, or tangible objects, not privileged, be ~~produced~~ introduced at the ~~same~~ time ~~and-place~~ the deposition is taken.

(2) ~~If--a-witness-is-committed-for-failure-to-give-bail~~

~~to-appear-to-testify-at-a-trial-or-hearing,-the--court--must direct--that--his--deposition-be-taken-at-the-expense-of-the state.-After-the-deposition-has-been-subscribed,--the--court shall-discharge-the-witness.~~ The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the district court, taking into account the convenience of the parties and of the witness.

(3) If the defendant is charged with a felony and it appears upon the affidavit of counsel for a party that good cause exists to believe that a witness will not respond to a subpoena and the administration of justice requires, any district judge may issue an arrest warrant commanding the arrest of a material witness. The arrest warrant must further order a deposition to be taken without unnecessary delay. A person may not be imprisoned for the purpose of securing testimony in any criminal proceeding longer than is necessary to take the person's deposition."

Section 148. Section 46-15-202, MCA, is amended to read:

"46-15-202. Procedure for taking depositions ~~---filing~~. (1) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice ~~shall~~ must state the name and address of each person to be examined. On motion of a the party upon whom the notice is

served, the district court for cause shown may extend or shorten the time or change the place for taking the deposition.

(2) A deposition ~~shall~~ must be taken in the manner provided in civil actions. The district court, ~~at--the~~ upon request, ~~of--a--defendant~~ may direct that a deposition be taken on written interrogatories in the manner provided in civil actions. However, a deposition may not be taken of a party defendant without his consent, and the scope and manner of examination and cross-examination must be restricted as would be allowed in the trial itself.

(3) The ~~court-shall--transmit--the~~ deposition ~~to--the clerk--of-the-court-making-the-order,-there-to~~ must be filed with the district court making the order and held until the ~~action--shall--come--on--for~~ trial. Either party shall make available to the other party, or the other party's counsel, for examination and use at the taking of the deposition any relevant, nonprivileged statement of the witness being deposed that is in the possession of either party.

(4) Objections to deposition testimony or evidence or parts of the testimony or evidence may be reserved for subsequent determination by the district court.

(5) Unless a defendant in custody has waived, in writing, the right to be present at the taking of a deposition, the officer having custody of the defendant must

be notified of the time and place set for the deposition. The officer having custody shall produce the defendant and keep the defendant in the presence of a witness during the deposition.

(6) A defendant not in custody who fails to appear, without good cause, at the taking of a deposition after being notified of the time and place set for the deposition will be considered to have waived the right to be present as provided in [section 128]. The waiver includes a waiver of any objection to the taking and use of the deposition based upon that right.

(7) Whenever a deposition is taken at the instance of the prosecution or whenever a deposition is taken at the instance of a defendant who is unable to bear the expense of taking a deposition, the district court shall direct that the expense of travel and subsistence of the defendant and the defendant's counsel for attendance at the examination and the cost of the transcript of the deposition be paid by the state."

Section 149. Section 46-15-204, MCA, is amended to read:

"46-15-201. Use of depositions at trial. ~~(1)-At-the trial-or-upon-any-hearing,-a-part-or-all-of-a deposition,-so far-as-otherwise-admissible-under the-rules-of-evidence,-may be-used-if-it appears-that:~~

~~(a)--the-witness-is-dead;~~

~~(b)--the-witness-is-out-of-the-state-of--Montana--unless it--appears--that-the-absence-of-the-witness-was-procured-by the-party-offering-the-deposition;~~

~~(c)--the-witness-is-unable-to-attend-or-testify--because of-sickness-or-infirmity;-or~~

~~(d)--the--party--offering-the-deposition-has-been-unable to-procure-the-attendance-of-the-witness-by-subpoena.~~

~~(2)~~ Any deposition may ~~also~~ be used by any party for ~~the~~ any purpose ~~of-contradicting-or-impeaching-the-testimony of-the-deponent-as-a-witness~~ allowed by the Montana Rules of Evidence.

~~(3)--If--only--a--part--of--a--deposition--is-offered-in evidence-by-a-party,-an-adverse-party--may--require--him--to offer--all--of--it-which-is-relevant-to-the-part-offered-and any-party-may-offer-other-parts.~~

~~(4)--Objections-to-receiving-in-evidence-a-deposition-or part-thereof-may-be-made-as-provided-in-civil-actions.~~

~~(5)--For--the--purposes--of--this--section,---the---word "deposition"--shall--in-addition-include-any-sworn-testimony previously-given-by-a-witness-which-has--been--recorded--and transcribed--by--a--qualified--stenographer-and-given-in-the presence-of-the-defendant-and-cross-examined-by-him--or--his attorney--on--matters-relevant-to-the-trial-or-hearing-where such-deposition-is-sought-to-be-used.~~"

Section 150. Section 46-14-101, MCA, is amended to read:

"46-14-101. Mental disease or defect. As used in ~~this~~ chapter [section 154], 46-14-312, 46-14-313, and this chapter, the term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or other antisocial ~~conduct~~ behavior."

Section 151. Section 46-14-102, MCA, is amended to read:

"46-14-102. Evidence of mental disease or ~~defect~~ admissible to prove state of mind. Evidence that the defendant suffered from a mental disease or ~~defect~~ is admissible ~~whenever--it--is--relevant~~ to prove that ~~the~~ defendant did or did not have a state of mind ~~which~~ that ~~is~~ an element of the offense."

Section 152. Section 46-14-103, MCA, is amended to read:

"46-14-103. Mental disease or defect excluding fitness to proceed. ~~No~~ A person who, as a result of mental disease or defect, is unable to understand the proceedings against ~~him~~ the person or to assist in ~~his~~ the person's own defense ~~shall~~ may not be tried, convicted, or sentenced for the commission of an offense so long as ~~such~~ the incapacity endures."

Section 153. Section 46-14-202, MCA, is amended to

read:

"46-14-202. ~~Psychiatric---examination~~ Examination of defendant. (1) If the defendant or ~~his~~ the defendant's counsel files a written ~~notice~~ motion requesting an examination ~~of-his-intent-to-rely-on--a--mental--disease--or defect--under--46-14-201~~ or ~~raises~~ if the issue of ~~his~~ the defendant's fitness to proceed is raised by the district court, prosecution, or defense counsel, the district court shall appoint at least one qualified psychiatrist or licensed clinical psychologist or shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist or licensed clinical psychologist, which designation may be or include ~~himself~~ the superintendent, to examine and report upon the defendant's mental condition ~~of-the-defendant~~.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period ~~of~~ not exceeding 60 days or ~~such~~ a longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist or licensed clinical psychologist retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination, any method may be employed ~~which~~ that is accepted by the medical or psychological profession for the examination of those alleged to be

suffering from mental disease or defect.

(4) ~~The~~ If the defendant is indigent or the examination occurs at the request of the prosecution, the cost of the examination must be paid by the county or the state, or both, according to procedures established under 3-5-902(1)."

NEW SECTION. **Section 154.** Prosecution's right to examination. (1) When the defense discloses the report of the examination to the prosecution or files a notice of the intention to rely on a defense of mental disease or defect, the prosecution is entitled to have the defendant examined by a qualified psychiatrist or licensed clinical psychologist.

(2) The report of the examination must be disclosed to the defense within 10 days of its receipt by the prosecution.

Section 155. Section 46-14-212, MCA, is amended to read:

"46-14-212. ~~Examination-by-expert-chosen--by--state--or defendant~~ Access to defendant for examination. If either the defendant or the ~~state~~ prosecution wishes the defendant to be examined by a qualified psychiatrist, or licensed clinical psychologist, ~~--or-other-expert~~ selected by the one proposing the examination in order to determine the defendant's fitness to proceed or whether ~~he~~ the defendant had, at the time the offense was committed, a particular

state of mind ~~which~~ that is an essential element of the offense, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination."

Section 156. Section 46-14-203, MCA, is amended to read:

"46-14-203. Report of the examination. (1) ~~The~~ A report of the examination ~~shall~~ must include the following:

(a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the defendant is seriously mentally ill as defined in 53-21-102;

(c) if the defendant suffers from a mental disease or defect, an opinion as to ~~his~~ the defendant's capacity to understand the proceedings against ~~him~~ the defendant and to assist in ~~his~~ the defendant's own defense; and

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind ~~which~~ that is an element of the offense charged; and

(e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental disease or defect, to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirement of the law.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate ~~therein~~ in

the examination, the report ~~shall so~~ must state that fact and ~~shall~~ must include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

~~(3) The report of the examination shall be filed in triplicate with the clerk of court, who shall deliver copies to the county attorney and to counsel for the defendant.~~"

Section 157. Section 46-14-213, MCA, is amended to read:

"46-14-213. Psychiatric or psychological testimony upon trial. (1) Upon the trial, any psychiatrist or licensed clinical psychologist who reported under 46-14-202 and or 46-14-203 may be called as a witness by the prosecution prosecutor or by the defense. ~~If the issue is being tried before a jury, the jury may not be informed that the psychiatrist or licensed clinical psychologist was designated by the court or by the superintendent of the Montana state hospital.~~ Both the prosecution and the defense may summon any other qualified psychiatrist, or licensed clinical psychologist, ~~or other expert~~ to testify, but no one who has not examined the defendant is competent to testify to an expert opinion with respect to the mental condition of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(2) When a psychiatrist~~,~~ or licensed clinical psychologist~~,-or-other-expert~~ who has examined the defendant testifies concerning the defendant's mental condition, ~~he~~ the psychiatrist or licensed clinical psychologist may make a statement as to the nature of ~~his~~ the examination~~,-his~~ and the medical or psychological diagnosis of the mental condition of the defendant ~~at-the-time-of-the-commission-of-the-offense-charged,-and-his-opinion-as-to--the--ability--of-the-defendant-to-have-a-particular-state-of-mind-which-is-an-element--of--the--offense--charged~~. The expert may make any explanation reasonably serving to clarify ~~his~~ the expert's examination and diagnosis~~,-and-opinion~~ and the expert may be cross-examined as to any matter bearing on ~~his~~ the expert's competency or credibility or the validity of ~~his~~ the expert's examination or medical or psychological diagnosis ~~or-opinion~~. A psychiatrist or licensed clinical psychologist may not offer an opinion to the jury on the ultimate issue of whether the defendant did or did not have a particular state of mind that is an element of the offense charged."

Section 158. Section 46-14-201, MCA, is amended to read:

"46-14-201. Requirement--of--notice------form Form of verdict and judgment. ~~(1)--Evidence--of-mental-disease-or-defect-is-not-admissible-in-a-trial-on-the-merits-unless-the-defendant,-at-the-time-of-entering-his-plea-of-not-guilty-or-within-10-days-thereafter-or-at-such-later-time-as-the-court-may-for-good-cause-permit,-files-a--written--notice--of--his-purpose--to-rely-on-a-mental-disease-or-defect-to-prove-that-he-did-not-have-a-particular--state--of--mind--which--is--an-essential--element-of-the-offense-charged.-Otherwise,-except-on-good-cause-shown,-he-shall-not-introduce-in-his--case--in-chief-expert-testimony-in-support-of-that-defense.~~

~~(2)~~ When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason that due to a mental disease or defect ~~he~~ the defendant ~~could~~ did not have a particular state of mind that is an essential element of the offense charged, the verdict and the judgment ~~shall-so~~ must state that reason."

Section 159. Section 46-14-401, MCA, is amended to read:

"46-14-401. Admissibility of statements made during examination or treatment. A statement made for the purposes of psychiatric or psychological examination or treatment provided for in this ~~chapter~~ section by a person subjected to ~~such~~ examination or treatment is not admissible in evidence against ~~him~~ the person ~~in-any-criminal--proceeding,-except--a--sentencing--hearing-conducted-under-46-14-311,~~ at trial on any issue other than that of ~~his~~ the person's mental condition. It is admissible on the issue of ~~his~~ the person's mental condition, whether or not it would otherwise

be considered a privileged communication, ~~unless---it constitutes-an-admission-of-guilt-of-the-crime~~ only when and after the defendant presents evidence that due to a mental disease or defect the defendant did not have a particular state of mind that is an element of the offense charged. ~~In a-hearing-held-under--46-14-311,--the--court--may--hear--and consider--any--such--statement--even--if--it--constitutes-an admission-of-guilt.~~"

Section 160. Section 46-14-221, MCA, is amended to read:

"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- expenses. (1) The issue of the defendant's fitness to proceed may be raised by the court, the defendant or ~~his~~ the defendant's counsel, or by the ~~county-attorney~~ prosecutor. When the issue is raised, it ~~shall~~ must be determined by the court. If neither the ~~county attorney~~ prosecutor nor counsel for the defendant contests the finding of the report filed under 46-14-203, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to ~~summon~~ subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against ~~him--shall~~ the defendant must be suspended, except as provided in subsection (4) ~~of-this-section~~, and the court shall commit ~~him~~ the defendant to the custody of the director of the department of institutions to be placed in an appropriate institution of the department of institutions for so long as the unfitness endures. The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that ~~he~~ the defendant is still unfit to proceed and that it does not appear that ~~he~~ the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against ~~him--shall~~ the defendant must be dismissed, except as provided in subsection (4) ~~of-this--section~~, and the ~~county--attorney~~ prosecutor shall petition the court in the manner provided in chapter 20 or 21 of Title 53, whichever is appropriate, to determine the disposition of the defendant pursuant to those provisions.

(3) If the court determines that the defendant lacks fitness to proceed because ~~he~~ the defendant is developmentally disabled as provided in 53-20-102(4), the proceeding against ~~him-shall~~ the defendant must be dismissed and the ~~county-attorney~~ prosecutor shall petition the court in the manner provided in chapter 20 of Title 53.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution ~~which~~ that is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of institutions to be placed in an appropriate institution of the ~~state~~ department of institutions, of keeping ~~him~~ the defendant there, and of bringing ~~him~~ the defendant back are chargeable to the state and payable according to procedures established under 3-5-902(1)."

Section 161. Section 46-14-222, MCA, is amended to read:

"**46-14-222. Proceedings if fitness regained.** When the court, on its own motion or upon the application of the director of the department of institutions, the ~~county attorney~~ prosecution, or the defendant or ~~his~~ the defendant's legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding ~~shall~~ must be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to

be discharged or, subject to the law governing the civil commitment of persons suffering from serious mental illness, order the defendant committed to an appropriate institution of the department of institutions."

Section 162. Section 46-14-301, MCA, is amended to read:

"**46-14-301. Commitment upon finding of not guilty by reason of lack of mental state -- hearing to determine release or discharge.** (1) When a defendant is found not guilty for the reason that due to a mental disease or defect ~~he~~ the defendant could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial ~~shall~~ must be considered by the court in making its determination.

(2) The court, upon finding that the defendant may not be discharged or released without danger to others, shall

order the defendant committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care, and treatment.

(3) A person committed to the custody of the superintendent shall have a hearing within 180 days of ~~his~~ confinement to determine ~~his~~ the person's present mental condition and whether ~~he~~ the person may be discharged or released without danger to others. The hearing ~~shall~~ must be conducted by the court ~~which~~ that ordered the commitment unless that court transfers jurisdiction to the third judicial district. The court shall cause notice of the hearing to be served upon the person, ~~his~~ the person's counsel, and the ~~prosecuting attorney~~ prosecutor. ~~Such a~~ The hearing ~~shall be deemed~~ is a civil proceeding, and the burden ~~shall be~~ is upon the defendant to prove by a preponderance of the evidence that ~~he~~ the defendant may be safely released.

(4) According to the determination of the court upon the hearing, the defendant ~~shall~~ must be discharged or released on ~~such~~ conditions ~~as~~ the court determines to be necessary or ~~shall~~ must be committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care, and treatment."

Section 163. Section 46-14-302, MCA, is amended to

read:

"**46-14-302. Discharge or release upon motion of superintendent.** (1) If the superintendent of the Montana state hospital believes that a person committed to ~~his~~ the superintendent's custody under 46-14-301 may be discharged or released on condition without danger to ~~himself~~ the person or others, ~~he~~ the superintendent shall make application for the discharge or release of the person in a report to the court by which the person was committed and shall send a copy of the application and report to the ~~county attorney~~ prosecutor of the county from which the defendant was committed.

(2) The court shall then appoint at least two persons who are either qualified psychiatrists or licensed clinical psychologists to examine the person and to report their opinion as to ~~his~~ the person's mental condition within 60 days or a longer period ~~which~~ that the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings ~~thereon~~ on the examinations, the court may have the person confined in any institution located near the place where the court sits ~~which~~ that may hereafter be designated by the superintendent of the Montana state hospital as suitable for the temporary detention of irresponsible persons.

(3) If the court is satisfied by the report filed under

subsection (1) ~~of--this--section~~ and the testimony of the reporting ~~psychiatrists~~ psychiatrist or licensed clinical ~~psychologists~~ psychologist ~~which---the--court--considers necessary~~ that the committed person may be discharged or released on condition without danger to ~~himself~~ the person or others, the court shall order ~~his~~ the person's discharge or ~~his~~ release on conditions ~~which~~ that the court determines to be necessary.

(4) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released. A hearing is considered a civil proceeding, and the burden is upon the committed person to prove by a preponderance of the evidence that ~~he~~ the person may safely be discharged or released. According to the determination of the court upon the hearing, the committed person ~~shall~~ must then be discharged or released on conditions ~~which~~ that the court determines to be necessary or ~~shall~~ must be recommitted to the custody of the superintendent of the Montana state hospital, subject to discharge or release only in accordance with the procedures ~~prescribed~~ provided in this section and 46-14-303."

Section 164. Section 46-14-303, MCA, is amended to read:

"46-14-303. Application for discharge or release by committed person. A committed person may make application

for ~~his~~ discharge or release to the court by which ~~he~~ the person was committed, and the procedure to be followed upon the application is the same as that prescribed ~~above~~ in 46-14-302 in the case of an application by the superintendent of the Montana state hospital. However, an application by a committed person need not be considered until ~~he~~ the person has been confined for a period of not less than 6 months from the date of the order of commitment, and if the determination of the court is adverse to the application, the person ~~shall~~ may not be permitted to file a further application until 1 year has elapsed from the date of any preceding hearing on an application for ~~his~~ the person's release or discharge."

Section 165. Section 46-14-304, MCA, is amended to read:

"46-14-304. Recommitment after conditional release. If within 5 years after the conditional release of a committed person the court determines after hearing evidence that the conditions of release have not been fulfilled and that for the safety of the person or for the safety of others ~~his~~ the person's conditional release should be revoked, the court shall immediately order ~~him~~ the person to be recommitted to the custody of the superintendent of the Montana state hospital, subject to discharge or release only in accordance with the procedures ~~prescribed~~ provided in 46-14-302 and

46-14-303."

Section 166. Section 46-14-311, MCA, is amended to read:

"46-14-311. Consideration of mental disease or defect in sentencing. Whenever a defendant is convicted on a verdict or a plea of guilty and he claims that at the time of the commission of the offense of which he--was convicted he the defendant was suffering from a mental disease or defect which that rendered him the defendant unable to appreciate the criminality of his-conduct the defendant's behavior or to conform his-conduct the defendant's behavior to the requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall require such additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report thereof of the examination as provided in 46-14-202 and 46-14-203."

Section 167. Section 46-14-312, MCA, is amended to read:

"46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which he the defendant was convicted did not suffer from a mental disease or defect as described in 46-14-311, it the court shall sentence him the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence him the defendant to be committed to the custody of the director of the department of institutions to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, provided if the treatment of the individual and the protection of the public are provided for.

(3) Either-the-director-or-a A defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

~~(a)~~ the defendant no--longer--suffers-from-a has been cured of the mental disease or defect;

~~(b)--the-defendant's-mental-disease-or-defect-no--longer renders--him--unable--to--appreciate--the-criminality-of-his conduct-or-to-conform-his-conduct--to--the--requirements--of law;--or~~

~~(c)--the--defendant--suffers--from--a--mental-disease-or~~

defect-that-makes-him-a-danger-to--himself--or--others,--but either--there--is--no--treatment--available--for--his-mental disease-or-defect-or-he-refuses-to-cooperate-with-treatment.

(4) The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year."

Section 168. Section 46-14-313, MCA, is amended to read:

"46-14-313. Discharge of defendant from supervision. At the expiration of the period of commitment or period of treatment specified by the court under 46-14-312(2), the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness."

Section 169. Section 46-13-101, MCA, is amended to read:

"46-13-101. Defenses-and-objections-which-may-be-raised before-trial Pretrial motions and notices. (1) Any Except for good cause shown, any defense, or objection which, or request that is capable of determination without the trial of the general issue may must be raised at or before trial by-motion-to-dismiss-or-for--other--appropriate--relief the

omnibus hearing unless otherwise provided by Title 46.

(2) Failure of a party to raise defenses or objections or to make requests that must be made prior to trial, at the time set by the court, constitutes a waiver of the defense, objection, or request.

(3) The court, for cause shown, may grant relief from any waiver provided by this section. Lack of jurisdiction or the failure of a charging document to state an offense is a nonwaivable defect and must be noticed by the court at any time during the pendency of a proceeding.

(4) Unless the court provides otherwise, all pretrial motions must be in writing and must be supported by a statement of the relevant facts upon which the motion is being made. The motion shall must state with particularity the grounds therefor for the motion and the order or relief sought."

Section 170. Section 46-13-104, MCA, is amended to read:

"46-13-104. Time--of--hearing-motion Ruling on motions. (1) A motion made before trial raising---defenses---or objections--shall must be determined before trial unless the court, for good cause, orders that it be deferred for determination at the trial of the general issue or until after the verdict, but a determination may not be deferred if a party's right to appeal is adversely affected.

(2) Except where mandated by Title 46, the court has discretion to conduct a hearing on the merits of a motion.

(3) The court's final determination of any pretrial motion must state, either in writing or on the record, the court's findings of fact and conclusions of law."

NEW SECTION. **Section 171.** Omnibus hearing. (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

(3) The presence of the defendant is not required. The prosecutor and the defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:

(a) joinder and severance of offenses or defendants, [sections 177, 178], and 46-11-404;

(b) double jeopardy, 46-11-502 through 46-11-504;

(c) the need for exclusion of the public and for sealing records of any pretrial proceedings, [section 125];

(d) notification of the existence of a plea agreement, [section 135];

(e) disclosure and discovery motions, Title 46, chapter 15, part 3;

(f) notice of reliance on certain defenses, 46-15-323;

(g) notice of seeking enhanced punishment, 46-13-503;

(h) notice of other crimes, wrongs, or acts, 46-13-503;

(i) motion to suppress, 46-13-301 and 46-13-302;

(j) motion to dismiss, 46-13-106 and 46-13-201;

(k) motion for change of place of trial, 46-13-203, 46-13-204, and [section 176];

(l) reasonableness of bail, [sections 72, 73, 76, 77], and Title 46, chapter 9; and

(m) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary.

Section 172. Section 46-18-503, MCA, is amended to read:

"46-18-503. ~~Procedural--requirements--if-sentence-to-be imposed~~ Notice by prosecutor seeking persistent felony offender status. (1) ~~If~~ Except for good cause shown, if the ~~state~~ prosecution seeks treatment of the accused as a persistent felony offender ~~under-46-18-502~~, notice of that fact must be given ~~in-writing-to-the-accused-or-his-attorney before--the--entry--of--a--plea--of guilty-by-the-accused-or~~

before-the-case-is-called-for--trial--upon--a--plea--of--not guilty at or before the omnibus hearing pursuant to 46-13-101.

(2) The notice must conform---to---the---following provisions:

~~(a)--The---notice---must~~ specify the alleged prior convictions ~~alleged-to-have-been-incurred-by-the-accused;~~

~~(b)--The-notice-and-the--charges--of--prior--convictions contained--therein-shall-not-be-made-public-or-in-any-manner~~ and may not be made known to the jury before the ~~jury's~~ verdict is returned ~~upon-the-felony-charge.-However,-if-the defendant-testifies-in-his-own--behalf,--he--is--subject--to impeachment--as-provided-in~~ except as allowed by the Montana Rules of Evidence.

(3) If the ~~accused-is-convicted-upon-the-felony-charge,~~ defendant objects to the allegations contained in the notice, ~~together with-proper-proof-of-timely-service,--shall be---filed---with--the--court--before--the--time--fixed--for sentencing.-The-court~~ the judge shall ~~then-fix--a--time--for~~ conduct a hearing ~~with--at--least--3--days'--notice-to-the accused~~ to determine if the allegations in the notice are true.

(4) The hearing ~~shall~~ must be held before the court judge alone. If the court judge finds any ~~of-the~~ allegations of the prior conviction convictions are true, the accused

shall must be sentenced ~~under-the-provisions-of-46-18-502~~ as provided by law.

(5) The notice must be filed and sealed until the time of trial or until a plea of guilty is given by the defendant."

Section 173. Section 46-13-302, MCA, is amended to read:

"46-13-302. ~~Motion--to-suppress~~ Suppression of evidence ~~illegally-seized.~~ (1) A defendant aggrieved by an unlawful search and seizure may move the court to suppress as evidence anything so obtained by the unlawful search and seizure. ~~The--motion--shall--be--in-writing-and-state-facts showing-wherein-the-search-and-seizure-were-unlawful;~~

(2) ~~The-motion-shall-be-made-before--trial--unless--for good-cause-shown-the-court-shall-otherwise-direct;~~

~~(3)--The--defendant--shall-give-at-least-10-days'-notice of-such-motion-to-the-attorney--prosecuting--or--such--other time--as--the--court-may-direct;-The-defendant-shall-serve-a copy-of-the-notice-and-motion-upon-the-attorney-prosecuting;~~

~~(4)~~--If the ~~allegations-of-the~~ motion state states facts which that, if true, would show that the ~~search-and--seizure were-unlawful~~ evidence should be suppressed, the court shall ~~conduct--a-hearing~~ into hear the merits of the motion at the omnibus hearing or at a later date if the court orders. ~~The burden--of-proving-that-the-search-and-seizure-were-unlawful~~

shall-be-on-the-defendant.

~~(5)~~(3) If the motion is granted, the evidence ~~shall~~ is not be admissible ~~against--the-movant~~ at any trial ~~of-the~~ case."

Section 174. Section 46-13-301, MCA, is amended to read:

"46-13-301. ~~Motion---to---suppress~~ Suppression of confession or admission. (1) A defendant may move to suppress as evidence any confession or admission given by ~~him~~ the defendant on the ground that it was ~~not--voluntary~~ involuntary. The motion ~~shall~~ must be in writing and state facts showing ~~wherein~~ why the confession or admission was involuntary.

~~(2) The--motion--shall--be-made-before-the-trial-unless for-good-cause-shown-the-court-shall-otherwise-direct.~~

~~(3)--The-defendant-shall-give-at-least-10--days'--notice of--such--motion--to--the-attorney-prosecuting-or-such-other time-as-the-court-may-direct.-The-defendant--shall--serve--a copy-of-the-notice-and-motion-upon-the-attorney-prosecuting.~~

~~(4)~~--If the allegations of the motion state facts ~~which~~ that, if true, show that the confession or admission was not ~~voluntarily-made~~ involuntary, the court shall conduct a hearing into the merits of the motion. The prosecution must prove by a preponderance of the evidence that the confession or admission was voluntary.

~~(5)~~(3) The issue of the admissibility of the confession or admission may not be submitted to the jury. If the confession or admission is determined to be admissible, the circumstances surrounding the making of the confession or admission may be submitted to the jury as bearing upon the credibility or the weight to be given to the confession or admission.

~~(6)~~(4) If the motion is granted, the confession or admission is not admissible in evidence only for purposes of impeachment against the movant at the trial of the case."

Section 175. Section 46-13-203, MCA, is amended to read:

"46-13-203. Change of place of trial for prejudice. (1) The defendant or the prosecution may move for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in such the county. ~~The-motion--must--be made--at--least--15-days-prior-to-trial-except-that,-if-good cause-is-shown,-it-may-be-made-thereafter.~~

~~(2) The-motion-must-be-in-writing-and-supported--by--an affidavit--which--must-state-facts-showing-the-nature-of-the prejudice-alleged.-The--defendant--or--the--state--may--file counteraffidavits.--The--court--shall--conduct-a-hearing-and determine-the-merits-of-the-motion.~~

~~(3)~~--If the court determines that there exists in the

county in which the prosecution is pending such prejudice that a fair trial cannot be had, ~~it~~ the court shall:

(a) transfer the cause to any other ~~court of competent jurisdiction in any~~ county in which a fair trial may be had;

(b) direct that a jury be selected in any county where a fair trial may be had and then returned to the county where the prosecution is pending to try the case; or

(c) take any other action designed to ~~insure~~ ensure that a fair trial may be had."

NEW SECTION. **Section 176.** Return to original place of trial. When a trial occurs after a change of place of trial and a retrial is required, the cause must be returned to the county in which the charge was originally properly filed for further proceedings.

NEW SECTION. **Section 177.** Trial of indictments, informations, complaints, or defendants together. The court may order two or more indictments, informations, complaints, or defendants to be tried together if the interests of justice require and the charges or defendants could have been joined in a single indictment, information, or complaint as provided for in 46-12-206, 46-15-322, and 46-15-323.

NEW SECTION. **Section 178.** Relief from prejudicial joinder. (1) If it appears that a defendant or the prosecution is prejudiced by a joinder of charges or

defendants in an indictment, information, or complaint or by a joinder for trial together, the court may order separate trials, grant a severance of defendants, or provide whatever other relief justice requires.

(2) In ruling on a motion by a defendant for severance, the court may order the prosecutor to deliver to the court for inspection, in camera, any statements or confessions made by the defendants that the prosecution intends to introduce at trial.

Section 179. Section 46-13-201, MCA, is amended to read:

"46-13-201. Dismissal at instance of court or prosecution. (1) The court may, either on its own motion or upon the application of the prosecuting attorney ~~prosecuting~~ and in furtherance of justice, order a complaint, information, or indictment to be dismissed. ~~---however~~ However, the court may not order a dismissal of a complaint, information, or indictment, or a count contained ~~therein~~ in a complaint, information, or indictment, charging a felony, unless good cause for dismissal is shown and the reasons for the dismissal are set forth in an order entered upon the minutes.

(2) ~~The~~ After the entry of a plea upon a misdemeanor charge, the court, unless good cause to the contrary is shown, ~~must~~ shall order the prosecution to be dismissed,

with prejudice, if a defendant whose trial has not been postponed upon ~~his application~~ the defendant's motion is not brought to trial within 6 months ~~after entry of plea upon a complaint, information, or indictment charging a misdemeanor.~~

~~(3) An order for the dismissal of an action as provided in this chapter is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony.~~"

Section 180. Section 46-13-106, MCA, is amended to read:

"46-13-106. Effect of order ~~of dismissal~~ to dismiss. If the court directs the action to be dismissed, the defendant must, if in custody, be discharged ~~therefrom or~~ and, if admitted to bail, have ~~his~~ bail exonerated or money deposited instead of bail refunded to ~~him~~ the defendant. ~~However, if the court grants a motion to dismiss based on a defect in the institution of the prosecution or in the indictment, information, or complaint or if it appears at any time before judgment that a mistake has been made in charging the proper offense, the court may also order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new complaint, indictment, or information.~~"

Section 181. Section 46-15-101, MCA, is amended to

read:

"46-15-101. Subpoenas. (1) ~~Upon~~ After the filing of charges and upon the request of the prosecuting attorney, ~~or~~ the defendant, or ~~his~~ the defendant's attorney, ~~the court or~~ the clerk of the court shall issue subpoenas with the name of the person to whom each subpoena is directed, commanding the person to appear and to give testimony.

(2) ~~The~~ A subpoena ~~shall~~ must state the name of the court and the title, if any, of the proceeding and ~~shall~~ must command each person to whom it is directed to attend and give testimony ~~and produce objects and documents~~ at the time and place specified ~~therein~~ in the subpoena.

(3) The court, upon a timely motion, may quash or modify a subpoena if compliance would be unreasonable or oppressive."

NEW SECTION. **Section 182.** Subpoenas for production of evidence. (1) A subpoena may command the person to whom it is directed to produce the books, papers, documents, or other objects designated in the subpoena.

(2) The court may direct that the books, papers, documents, or other objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered into evidence and may upon their production permit the books, papers, documents, or objects, or portions thereof, to be inspected

by the parties and their attorneys.

(3) The court, upon a timely motion, may quash or modify a subpoena if compliance would be unreasonable or oppressive.

Section 183. Section 46-15-102, MCA, is amended to read:

"46-15-102. Service of subpoenas. (1) A subpoena may be served by a peace officer or by any other person who is not a party and who is not less than 18 years of age. A peace officer ~~must~~ shall serve ~~in--his--county~~ any subpoena delivered to ~~him~~ the peace officer for service in the peace officer's county either on the part of the ~~state~~ prosecution or of the defendant.

(2) Service of a subpoena ~~shall~~ must be made by delivering a copy ~~thereof~~ of the subpoena to the person named and, if ordered by the court, by tendering to those residing outside the county of trial the fee for 1 day's attendance and the mileage allowed by law. The person making the service ~~must~~ shall without delay make a written return of the service subscribed by ~~him~~ the person, stating the time and place of service.

(3) A subpoena requiring attendance of a witness at a hearing or trial may be served anywhere within the state of Montana."

Section 184. Section 46-15-112, MCA, is amended to

read:

"46-15-112. ~~Summoning--witness~~ Subpoena of witness in this state to testify in another state. (1) If a judge of a court of record in any state, which by its laws has made provision for commanding persons within that state to attend and testify in this state, certifies under the seal of ~~such~~ the court that there is a criminal prosecution pending in ~~such~~ the court or that a grand jury investigation ~~has~~ is commenced or is about to commence, that a person being within this state is a material witness in ~~such~~ the prosecution or a grand jury investigation, and that ~~his~~ the person's presence will be required for a specified number of days, upon presentation of ~~such~~ the certificate to any judge of a court of record in the county in which ~~such~~ the person is located, ~~such~~ the judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

(2) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending or a grand jury investigation ~~has~~ is commenced or is about to commence will give ~~to him~~ the witness protection from arrest and the service of civil and

criminal process, he the judge shall issue a summons subpoena with a copy of the certificate attached directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation has is commenced or is about to commence at a time and place specified in the summons subpoena. In any-such the hearing, the certificate shall-be is prima facie evidence of all the facts stated therein in the certificate.

(3) If said the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his the witness's attendance in the requesting state, such the judge may, in lieu of notification of the hearing, direct that such the witness be forthwith brought before him the judge for said the hearing. The At the hearing, the judge at-the-hearing being-satisfied-of-the--desirability--of--such--custody--and delivery,--for--which-determination-the-certificate-shall-be prima-facie-proof-of-such--desirability, may, in lieu of issuing a subpoena or-summons, order that said the witness be forthwith taken into custody and delivered to an officer of the requesting state.

~~(4)--If--the-witness-who-is-summoned-as-provided-in-this section,-after-being--paid--or--tendered--by--some--properly authorized--person--the-sum-of-10-cents-a-mile-for-each-mile and-$5-for-each-day-that-he-is-required-to-travel-and-attend as-a-witness,-fails-without-good-cause-to-attend-and-testify as-directed-in-the-summons,-he--shall--be--punished--in--the manner--provided--for--the--punishment--of--any--witness-who disobeys-a-summons-issued-from-a-court--of--record--in--this state.~~"

Section 185. Section 46-15-113, MCA, is amended to read:

"46-15-113. Witness-from Subpena of witness in another state summoned to testify in this state. (1) Whenever a person in any state which that by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations in this state is a material witness in a prosecution pending in a court of record in this state or in a grand jury investigation which-has that is commenced or is about to commence, a judge of the court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate shall must be presented to a judge of a court of record in the county in which the witness is found.

(2) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of this state to assure his the witness's attendance in this state, it is prima facie proof of the desirability of such

the custody and delivery, and the judge may direct that the witness be brought before ~~him~~ the judge immediately. If the judge is satisfied as to the desirability of ~~such~~ custody and delivery, ~~he~~ the judge may order that the witness be immediately taken into custody and delivered to an officer of this state. The order is sufficient authority for the officer to take the witness into custody and hold ~~him~~ the witness unless and until ~~he~~ the witness is released by bail, recognizance, or order of the judge issuing the certificate.

~~(3) Whenever a witness is summoned to attend and testify in this state, he shall be tendered the sum of 10 cents a mile for each mile and $5 for each day that he is required to travel and attend as a witness. If the state wherein the witness is found has by statutory enactment required that the summoned witness be paid an amount in excess of the amount specified in the preceding sentence, the witness may be tendered the amount required by that state.~~

~~(4)~~--A witness who has appeared in accordance with the provisions of the ~~summons~~ subpoena may not be required to remain within this state for a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court.

~~(5)~~(4) If the witness fails without good cause to attend and testify as directed ~~in the summons~~, ~~he shall~~ the

witness must be punished in the manner provided for the punishment of any witness who disobeys ~~a summons~~ an order issued from a court of record in this state in accordance with Title 3, chapter 1, part 5, or in accordance with 45-7-309."

Section 186. Section 46-15-103, MCA, is amended to read:

"46-15-103. ~~Indigent defendants~~ Subpoena for witness when defendant unable to pay. (1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of the defendant and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the witness and that the presence of the witness is necessary to an adequate defense.

(2) ~~When the~~ If a defendant is indigent, a court order must be obtained if more than six witnesses are to be subpoenaed. ~~If a witness is to be paid more than the regular fee or there are more than six witnesses to be paid, an order of the court or judge is needed. Such order may be made upon proper showing by affidavit or otherwise.~~"

Section 187. Section 46-15-104, MCA, is amended to read:

"46-15-104. Expenses of witness Fees, costs, and expenses. (1) When a person attends before a magistrate

judge, grand jury, or court as a witness in a criminal case upon a subpoena, ~~or--in--pursuance--of--an--undertaking,--the judge,--at--his--discretion,--by--a--written--order--may--direct--the clerk--of--the--court--to--draw--his--warrant--upon--the--county treasurer--in--favor--of--such--witness--for--a--reasonable--sum,--to be--specified--in--the--order,--for--the--necessary--expenses--of~~ the witness shall receive the witness fee prescribed by Title 26, chapter 2, part 5. The court, on motion by either party, may allow additional fees for expert witnesses.

(2) The court may determine the reasonable and necessary expenses of subpoenaed witnesses and order the clerk of the court to pay the expenses from the county treasury.

(3) When a person is subpoenaed in this state to testify in another state or is subpoenaed from another state to testify in this state, the person must be paid for lodging, mileage or travel, and per diem, the sum equal to that allowed by Title 2, chapter 18, part 5, for each day that the person is required to travel and attend as a witness. If the state where the witness is found has by statutory enactment required that the subpoenaed witness be paid an amount in excess of the amount specified in this section, the witness may be paid the amount required by that state.

~~(2)~~(4) According to procedures established by the

department of commerce under 3-5-902~~(1)~~, the clerk of the district court shall submit to the department a detailed statement containing a list of witnesses and the amount of expenses paid to each witness by the county. Upon receipt and verification of the statement, the department shall promptly reimburse the designated county for all or a portion of the ~~cost of~~ witness expenses. The county shall deposit the amount reimbursed in its general fund ~~unless--the county--has--a--district--court--fund.--If--the--county--has--a district--court--fund,--the--amount--reimbursed--must--be--deposited in--such--fund.~~"

Section 188. Section 46-15-114, MCA, is amended to read:

"46-15-114. Exemption from arrest and service of process. (1) If a person comes into this state in obedience to a ~~summons~~ subpoena directing ~~him~~ the person to attend and testify in this state, ~~he shall~~ the person may not, while in this state pursuant to ~~such summons~~ the subpoena or order, be subject to arrest or the service of process, civil or criminal, in connection with matters which that arose before ~~his~~ the person's entrance into this state under the ~~summons~~ subpoena.

(2) If a person passes through this state while going to another state in obedience to a ~~summons~~ subpoena or order to attend and testify in that state or ~~while returning~~

therefrom, he--shall the person may not, while so passing through this state, be subject to arrest or the service of process, civil or criminal, in connection with matters which that arose before his the person's entrance into this state under the summons-or-order subpoena."

Section 189. Section 46-16-102, MCA, is amended to read:

"46-16-102. Right to jury trial -- waiver. (1) Defendants in all criminal felony cases shall have a right to trial by a jury not-to-exceed of 12 in-number persons.

(2) The parties may agree in writing at any time before the verdict, with the approval of the court, that the jury shall consist of any number less than 12 that to which they are entitled.

(2)(3) Upon written consent of the parties defendant, a trial by jury may be waived."

Section 190. Section 46-16-301, MCA, is amended to read:

"46-16-301. Formation of trial jury. (1) Trial juries for in criminal actions cases are formed in the same manner as trial juries in civil actions;--except--that--the--total number--of--jurors--drawn--shall--be--at-least-the-numb of jurors-needed-plus-the-total-number-of-peremptory-challenges ca: es.

(2) The qualifications of jurors and exclusion from jury

duty are prescribed in Title 3, chapter 15, part 3."

Section 191. Section 46-16-302, MCA, is amended to read:

"46-16-302. Motion to discharge jury panel. (1) Any objection to the manner in which a jury panel has been selected or drawn shall must be raised by a motion to discharge the jury panel. The Except for good cause shown, the motion shall must be made at least 5 days prior to the term for which the jury is drawn. For-good-cause-shown,--the court-may-entertain-the-motion-at-any-time-thereafter.

(2) The motion shall must be in writing supported by affidavit and shall must state facts which that show that the jury panel was improperly selected or drawn.

(3) If the motion states facts which that show that the jury panel has been improperly selected or drawn, it shall be is the duty of the court to conduct a hearing. The burden of proof shall-be is on the movant.

(4) If the court finds that the jury panel was improperly selected or drawn, the court shall order the jury panel discharged and the selection or drawing of a new panel in the manner provided by law."

Section 192. Section 46-16-303, MCA, is amended to read:

"46-16-303. Examination of prospective jurors. (1) The clerk of court shall make available to the parties a list of

prospective jurors with their addresses questionnaires when the names have been drawn.

(2) The county-attorney prosecutor and the defendant or his the defendant's attorney shall conduct the examination of prospective jurors. The court judge may conduct an additional examination. The court judge may limit the examination by the defendant, his the defendant's attorney, or the prosecuting-attorney prosecutor if the court-believes such examination to-be is improper."

Section 193. Section 46-16-304, MCA, is amended to read:

"46-16-304. Challenges for cause. (1) Each party may challenge jurors for cause, and each challenge must be tried by the court.

(2) A challenge for cause may be taken for all or any of the following reasons or for any other reason which that the court determines:

(a) having consanguinity or relationship to the defendant or to the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(b) standing in the relation of guardian and ward, attorney and client, master and servant, landlord and tenant, or debtor and creditor with or being a member of the family of in the employment of the defendant or the person

who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(c) being a party adverse to the defendant in a civil action or having complained against or been accused by him the defendant in a criminal prosecution;

(d) having served on the grand jury which that found the indictment or on a coroner's jury which that inquired into the death of a person whose death is the subject of the indictment or information;

(e) having served on a trial jury which that tried another person for the offense charged or a related offense;

(f) having been a member of a jury formerly sworn to try the same charge, the verdict of which was set aside or which was discharged without verdict after the case was submitted to it;

(g) having served as a juror in a civil action brought against the defendant for the act charged as an offense;

(h) if the offense charged is punishable with death, having such any conscientious opinions concerning the punishment as would preclude his finding the defendant guilty, in which case he the person must neither be permitted nor compelled to serve as a juror;

(i) having a belief that the punishment fixed by law is too severe for the offense charged; or

(j) having a state of mind in reference to the case or

to either of the parties ~~which~~ that would prevent ~~him~~ the juror from acting with entire impartiality and without prejudice to the substantial rights of either party.

(3) An excuse from service on a jury is not a cause of challenge but the privilege of the person excused."

Section 194. Section 46-16-305, MCA, is amended to read:

"46-16-305. Peremptory challenges. (1) Each defendant ~~shall be~~ is allowed eight peremptory challenges in capital cases, and six in all other cases tried in the district court before a 12-person jury. There may not be additional challenges for separate counts charged in the indictment or information.

(2) If the indictment or information charges a capital offense as well as lesser offenses in separate counts, the maximum number of challenges is eight.

(3) The state ~~shall be~~ is allowed the same number of peremptory challenges as all of the defendants.

(4) In a criminal case tried ~~in the district court~~ before a six-person jury, the state and all the defendants ~~shall be~~ are allowed three peremptory challenges each.

(5) When the parties in a criminal case in the district court agree upon a jury consisting of a number of persons other than 6 or 12, they shall also agree in writing upon the number of peremptory challenges to be allowed."

Section 195. Section 46-16-307, MCA, is amended to read:

"46-16-307. Alternate jurors. (1) ~~After the jury is impaneled and sworn, the~~ The court may direct that one or more alternate jurors be selected in the same manner as principal jurors. The alternate jurors shall take the same oath as the principal jurors.

(2) Each party shall have one additional peremptory challenge for each alternate juror.

(3) Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury arrives at its verdict, become unable or disqualified to perform their duties. An alternate juror may not join the jury in its deliberation unless called upon by the court to replace a member of the jury. ~~His~~ An alternate juror's conduct during the period in which the jury is considering its verdict ~~shall be~~ is regulated by instructions of the trial court. An alternate juror who does not replace a principal juror ~~shall~~ must be discharged after the jury arrives at its verdict."

Section 196. Section 46-16-201, MCA, is amended to read:

"46-16-201. Applicability of rules of evidence and civil rules. The Montana Rules of Evidence and the statutory rules of evidence in civil actions are applicable also to

criminal actions, except as otherwise provided ~~in--this~~ code."

Section 197. Section 46-16-601, MCA, is amended to read:

"46-16-601. Defendant presumed innocent -- reasonable doubt. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether ~~his~~ the defendant's guilt is satisfactorily shown, ~~he-is-entitled--to--an--acquittal~~ the defendant must be found not guilty."

Section 198. Section 46-16-212, MCA, is amended to read:

"46-16-212. Competency of spouses. (1) ~~Except-with-the~~ Neither spouse may testify to the communications or conversations between spouses that occur during their marriage unless:

(a) consent of ~~both-or-in-cases~~ of the ~~defendant-spouse~~ is obtained;

(b) the defendant-spouse has been charged with an act of criminal violence ~~by-one-upon~~ against the other; or

(c) the defendant-spouse has been charged with abuse, abandonment, or neglect of the other spouse or either spouse's children ~~by-either-party,--or-abandonment-or-neglect of-one-by-the-other,-neither.~~

(2) Except as provided in subsection (1), a spouse is a

competent witness for or against the other spouse ~~in--a criminal--action--or--proceeding--to--which--one-or-both-are parties.~~"

Section 199. Section 46-16-213, MCA, is amended to read:

"46-16-213. Testimony of person legally accountable. ~~A conviction--cannot--be-had~~ person may not be found guilty of an offense on the testimony of one responsible or legally accountable for the same offense, as defined in 45-2-301, unless the testimony is corroborated by other evidence ~~which~~ that in itself and without the aid of the testimony of the one responsible or legally accountable for the same offense tends to connect the defendant with the commission of the offense. ~~The--corroboration--is-not-sufficient-if-it-merely shows-the-commission-of-the--offense--or--the--circumstances thereof.~~"

NEW SECTION. **Section 200.** Use of confession. Before an extrajudicial confession of the defendant to the crime charged may be admitted into evidence, the prosecution shall introduce independent evidence tending to establish the commission of the crime charged.

NEW SECTION. **Section 201.** Videotaped testimony. (1) For any prosecution commenced under 45-5-502(3), 45-5-503, 45-5-507, or 45-5-507, the testimony of the victim, at the request of the victim and with the concurrence of the

prosecutor, may be recorded by means of videotape for presentation at trial. The recorded testimony may be presented at trial and must be received into evidence. The victim need not be physically present in the courtroom when the videotape is admitted into evidence.

(2) The procedural and evidentiary rules of the state that are applicable to criminal trials within the state apply to the videotape proceedings authorized by this section.

(3) The district court judge, the prosecutor, the victim, the defendant, the defendant's attorney, and other persons as are considered necessary by the court to make the recordings authorized under this section must be allowed to attend the videotape proceedings.

(4) Videotapes that are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

Section 202. Section 46-16-401, MCA, is amended to read:

"46-16-401. Order of trial. (1) The After the jury is sworn but before the introduction of any evidence, the court may instruct give the jury as to its duties general instructions concerning the conduct of the trial. Such general instructions must be settled in the same manner as provided for the settlement of special instructions in

subsection (4) of this section. The court shall give the jury such cautionary instructions as may be required during the course of the trial.

(2) The county attorney must state the case prosecutor may make an opening statement and shall offer evidence in support of the prosecution. The defendant may make his an opening statement prior to the state's prosecutor's offer of evidence or at the close of the prosecution's case out prior to the defendant's may state his defense and then offer of evidence in support thereof after the state rests.

(3) The parties prosecutor and the defendant may, then respectively, offer rebutting testimony only, unless However, the court, for good cause, permits them may permit either party to offer evidence upon their the original case at any time before the close of evidence.

(4) (a) When the evidence is concluded, if either party desires special instructions to be given to the jury, such instructions shall be reduced to writing, numbered, signed by the party or his attorney, and delivered to the court.

(b) The instructions shall be settled by the court without the presence of the jury. At the settlement counsel for the parties or the defendant, if he is without counsel, shall be allowed reasonable opportunity to examine the instructions requested and proposed to be given by the court and to present and argue to the court objections to the

adoption-or-rejection-of-any-instruction-offered-by--counsel or--proposed--to--be-given-to-the-jury-by-the-court.-On-such settlement-of-instructions,-the-respective--counsel--or--the parties--shall--specify--and--state-the-particular-ground-on which-an--instruction--is--objected--to;--it--shall--not--be sufficient-to-object-generally-that-the-instruction-does-not state--the-law-or-is-against-the-law,-but-the-objection-must specify-particularly-wherein-the-instruction-is-insufficient or-does-not-state-the-law-or-what-particular-clause--therein is-objected-to.

(c)--The--court--shall--pass--upon-the-objections-to-the instructions-and--shall--either--give--each--instruction--as requested--or--proposed,-positively-refuse-to-do-so,-or-give the-instruction-with-modification.-The-court-shall--mark--or endorse-upon-each-instruction-in-such-a-manner-that-it-shall distinctly--appear--what-instructions-were-given-in-whole-or in-part-and,-in-like-manner,-those-refused-or-modified--and, if-modified,-wherein-and-how-modified.-All-instructions-must be-filed-as-a-part-of-the-record-of-the-cause.-No-exceptions are--necessary-to-the-rulings-of-the-court-on-the-settlement of-instructions.

(d)--The--court--reporter--shall--be--present--at---such s ttlement--and-shall-take-down-all-the-objections-to-any-or all-of-the-instructions--given--or--refused--by--the--court together--with--modifications-made-therein-and-the-ruling-of

the-court-thereon.

(5)--When-the-instructions-have--been--passed--upon--and settled--by--the--court-and-before-the-arguments-to-the-jury have-begun,-the-court-shall--charge--the--jury--in--writing, giving--in--such--charge-only-such-instructions-as-have-been passed-upon-and-settled.-In-charging--the--jury,--the--court shall-give-them-all-matters-of-law-which-it-thinks-necessary for-the-jury's-information-in-rendering-a-verdict.

(6)--When--the-jury-has-been-charged,-unless-the-case-is submitted-to-the-jury--on--either--side--or--on--both--sides without--argument,-the-county-attorney-must-commence-and-may conclude-the-argument.-If-several-defendants-having--several defenses---appear--by--different--counsel,--the--court--must determine-their-relative-order--in--evidence--and--argument. Counsel,-in-arguing-the-case-to-the-judge-or-jury,-may-argue and--comment--upon--the--law--of--the--case--as-given-in-the instructions-of-the-court,-as-well-as-upon-the--evidence--of the--case. Prior to final arguments, the court shall inform the parties as to the instructions that will be given and read them to the jury.

(5) A written copy of the instructions, both general and special, must be delivered to the jury for its consideration during deliberations following the final arguments."

Section 203. Section 46-16-403, MCA, is amended to

read:

"46-16-402. When order may be departed from. ~~When--the state--of--the-pleading-requires-it-or-in-any-other-case-for~~ For good ~~reasons~~ cause shown and in the discretion of the court, the order prescribed in 46-16-401 may be departed from."

Section 204. Section 46-16-403, MCA, is amended to read:

"46-16-403. Evidence insufficient to go to jury. When, at the close of the ~~state's~~ prosecution's evidence or at the close of all the evidence, the evidence is insufficient to support a finding or verdict of guilty, the court may, on its own motion or on the motion of the defendant, dismiss the action and discharge the defendant. However, prior to dismissal, the court may allow the case to be reopened for good cause shown."

NEW SECTION. **Section 205.** Settlement of jury instructions. (1) Any party may request special jury instructions. All requests for instructions must conform to the Uniform District Court Rules, and all instructions must be settled by the court out of the presence of the jury.

(2) A record must be made at the settlement of instructions.

(3) A party may not assign as error any portion of the instructions or omission from the instructions unless an

objection was made specifically stating the matter objected to, and the grounds for the objection, at the settlement of instructions.

(4) The presence of the defendant is not required during the settlement of instructions.

Section 206. Section 46-16-501, MCA, is amended to read:

"46-16-501. Conduct of jury during trial. (1) The jurors sworn to try an action may at any time ~~before-the submission-of-the-case~~, in the discretion of the court, be permitted to separate or be ~~kept~~ ordered to remain sequestered in the charge of a proper officer. ~~The~~ If sequestered, the officer must be sworn to keep the jurors together ~~until-the-next-meeting--of--the--court~~, to ~~suffer~~ allow no person to ~~speak-to-them-or~~ communicate with ~~them~~ the jury or to ~~do-so-himself~~ personally communicate with the jury on any subject connected with the trial, and to return ~~them~~ the jury into court ~~at-the-next-meeting-thereof~~ as directed.

(2) ~~(a) The--jury--must--also~~ Whether permitted to separate or sequestered, at each adjournment of the court, ~~whether-permitted-to-separate-or-kept-in-charge-of-officers,~~ the jurors must be admonished ~~by-the-court~~ that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial or to form or express

any opinion thereon on the trial until the cause is finally submitted to them.

~~(b)~~(3) In all cases appealed to the supreme court, it ~~shall~~ must be conclusively deemed considered that the court or judge gave the proper admonition in accordance with the provision of subsection (2)~~(a)~~ unless the record affirmatively shows to the contrary."

Section 207. Section 46-16-502, MCA, is amended to read:

"46-16-502. View of relevant place or property. When the court deems considers it proper that the jury view any place or personal property pertinent to the case, it will order the jury to be conducted in a body under the custody of the sheriff or bailiff to view said the place or personal property in the presence of the court, the prosecutor, the defendant, and ~~his~~ the defendant's counsel. The place or personal property will be shown them by a person appointed by the court for that purpose, and they may personally inspect the same place or personal property. The sheriff or bailiff must be sworn to suffer allow no person to speak or otherwise communicate with the jury or to do--so--himself personally communicate with the jury on any subject connected with the trial and to return them into the courtroom without unnecessary delay or at a specified time, as the court may direct."

Section 208. Section 46-16-503, MCA, is amended to read:

"46-16-503. Conduct of jury after retirement -- advice from court. (1) When the jury retires to consider its verdict, an officer of the court must be appointed to keep the jurors together and to prevent conversations between the jurors and others.

(2) After the jury has retired for deliberation, if there is any disagreement among the jurors as to the testimony or if the jurors desire to be informed on any point of law arising in the cause, they must require shall notify the officer appointed to keep them together, who shall then notify the ~~to-conduct-them-into~~ court. ~~When--the~~ ~~jurors are-brought-into-court,-the~~ The information requested may be given, in the discretion of the court, after consultation with the parties. ~~If-such-information-is-given,~~ ~~it--must-be-given-in-the-presence-of-the-county-attorney-and~~ ~~the-defendant-and-his-counsel.~~"

Section 209. Section 46-16-504, MCA, is amended to read:

"46-16-504. Items which that may be taken into the jury room. Upon retiring for deliberation, the jury jurors may take with them ~~all--papers--which--have--been-received-as~~ ~~evidence-in-the-cause,-except-depositions-or-copies-of--such~~ papers--as--ought--not, ~~in--the-opinion-of-the-court,-to-be~~

~~taken-from-the-person-having-them--in--his--possession;--The jury--may--also--take-with-them-any-exhibits-which-the-court may-deem-proper-and~~ the written jury instructions read by the court, notes of the proceedings taken by themselves, and all exhibits that have been received as evidence in the cause that in the opinion of the court will be necessary."

Section 210. Section 46-16-505, MCA, is amended to read:

"46-16-505. Activity of court during jury's absence. While the jury is absent, the court may adjourn ~~from-time-to time---as---to~~ or conduct other business, but it must ~~nevertheless~~ be open for every purpose connected with the cause submitted to the jury until a verdict is returned or the jury discharged."

Section 211. Section 46-16-603, MCA, is amended to read:

"46-16-603. Form of verdict. (1) The jury shall return ~~a general~~ verdict ~~to-each-offense-charged~~ as instructed by the court. The verdict ~~shall~~ must be signed by the foreman and returned by the jury to the judge in open court.

(2) If there are two or more defendants, the jury, at any time during its deliberations, may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed. If the jury cannot agree with respect to

all, the defendant or defendants as to whom it does not agree may be tried again.

~~(3)--The--defendant--may--be--found-guilty-of-an-offense necessarily-included-in-the-offense-charged-or-of-an-attempt to--commit--either--the--offense--charged--or---an---offense necessarily-included-therein-if-the-attempt-is-an-offense;~~"

Section 212. Section 46-16-605, MCA, is amended to read:

"46-16-605. Acquittal Verdict of not guilty -- when defendant discharged. If ~~judgment-of-acquittal~~ a verdict of not guilty is ~~given-on-a-general-verdict~~ returned and the defendant is not detained for any other legal cause, he the defendant must be discharged as soon as the judgment is given ~~except,-where-the-acquittal-is-because-of--a--variance between--the--pleading--and-proof-which-may-be-obviated-by-a new-indictment-or--information,--the--court--may--order--his detention--to--the--end-that-a-new-indictment-or-information may-be-filed-by-the-county-attorney.~~"

NEW SECTION. **Section 213.** Conviction of lesser included offense. (1) The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included in the offense charged.

(2) A lesser included offense instruction must be given when there is a proper request by one of the parties and the

jury, based on the evidence, could be warranted in finding the defendant guilty of a lesser included offense.

(3) When a lesser included offense instruction is given, the court shall instruct the jury that it must reach a verdict on the crime charged before it may proceed to a lesser included offense. Upon request of the defendant at the settling of instructions, the court shall instruct the jury that it may consider the lesser included offense if it is unable after reasonable effort to reach a verdict on the greater offense.

Section 214. Section 46-16-701, MCA, is amended to read:

"46-16-701. ~~Definition--and--effect~~ Effect of a new trial. ~~A--"new-trial"-is-a-reexamination-of-the-issue-in-the-same-court-before-another-jury-after-a--verdict--or--finding-has--been--rendered.~~ The granting of a new trial places the parties in the same position as if there had been no trial."

Section 215. Section 46-16-702, MCA, is amended to read:

"46-16-702. Motion for a new trial. (1) Following a verdict or finding of guilty, the court may grant the defendant a new trial if required in the interest of justice.

(2) The motion for a new trial must be in writing and must specify the grounds ~~therefor~~ for a new trial. ~~It~~ The

motion must be filed by the defendant within 30 days following a verdict or finding of guilty. ~~Reasonable--notice--of--the--motion--must~~ and be served ~~on~~ upon the ~~state~~ prosecution.

(3) On hearing the motion for a new trial, if justified by law and the weight of the evidence, the court may:

(a) deny the motion;

(b) grant a new trial; or

(c) modify or change the verdict or finding by finding the defendant guilty of a lesser included offense or finding the defendant not guilty."

Section 216. Section 46-17-201, MCA, is amended to read:

"46-17-201. ~~Trial-by-jury~~ Juries in misdemeanor cases. (1) The defendant in a misdemeanor case is entitled to a jury of six qualified persons, but the parties may agree to a number less than six at any time before the verdict.

(2) A Upon consent of the defendant, a trial by jury may be waived ~~by-the-consent-of-both--parties--expressed--in-open-court-and-entered-in-the-docket.~~

~~(3)--Questions--of-law-shall-be-decided-by-the-court-and-questions-of-fact-by-the-jury-except-that,-when-a-jury-trial-is-waived,-the-court-shall-determine-both-questions--of--law-and-questions-of-fact.~~"

Section 217. Section 46-17-202, MCA, is amended to

read:

"46-17-202. Formation of trial jury for justices', municipal, and city courts. (1) At the time of preparing the district court jury list, the county commissioners and clerk and recorder shall prepare a jury list for each justice's, municipal, and city court within the county. Each list ~~shall~~ must consist of residents of the appropriate county, city, or town. The lists ~~shall~~ must be selected in any reasonable manner ~~which~~ that ensures fairness, and each ~~shall~~ list must include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists ~~shall~~ must be filed in the office of the clerk of the district court. The appropriate list ~~shall~~ must be posted in a public place in each county, city, or town, and ~~such~~ the list ~~shall~~ must comprise the trial jury list for the ensuing year for ~~such~~ the county, city, or town.

(2) Trial jurors ~~shall~~ must be summoned from the jury list by notifying each one orally that ~~he~~ the person is summoned and of the time and place at which ~~his~~ attendance is required.

~~(3)--The--prosecuting--attorney-and-the-defendant-or-his attorney--shall--conduct--the--examination--of---prospective jurors.--The-court-may-conduct-an-additional-examination.-The court--may--limit--the--examination--by--the--defendant,-his attorney,-or-the-prosecuting-attorney-if-the-court--believes such-examination-to-be-improper.~~

~~(4)--Each-party-may-challenge-jurors-for-cause,-and-each challenge--must--be-tried-by-the-court.--The-challenge-may-be for-any-cause-enumerated--in--46-16-304(2).---Each--defendant shall--be-allowed-three-peremptory-challenges,-and-the-state shall-be allowed-the-same-number-of-peremptory-challenges-as all-of-the-defendants.~~"

Section 218. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except for cases in which legal issues are preserved for appeal ~~as-provided-in 46-17-203~~ pursuant to 46-12-204, all cases on appeal from ~~justices'~~ a justice's, municipal, or city ~~courts~~ court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as ~~a--trial--jury--in--a--civil action,--except--that-the-total-number-of-jurors-drawn-shall be--at--least--six--plus--the--total--number--of--peremptory challenges~~ for other criminal cases.

(2) ~~A-party~~ The defendant may appeal to the district court by ~~giving~~ filing written notice of ~~his~~ intention to appeal within 10 days after a judgment, ~~except--that--the~~ state is rendered following trial. In the case of an appeal by the prosecution, the notice must be filed within 10 days

of the date the order complained of is given. The prosecution may only appeal in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the ~~justice's--or city~~ court ~~proceedings--must--be--transferred~~ of limited jurisdiction to the district court ~~or-the-appeal-must-be dismissed. It-is-the-duty-of-the-appellant--to--perfect--the appeal.~~"

Section 219. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation -- when required. (1) ~~No--defendant--convicted--of--an-offense-under-45-5-502 through-45-5-505,-45-5-507,-or-45-5-625-against-a-victim-who was-less-than-16-years-old-when-the--offense--was--committed may--be--sentenced-or-otherwise-disposed-of-before-a-written report-of-investigation-by-a~~ Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer ~~is-presented-to-and-considered--by--the--court.--The investigation--must--include--an-evaluation-of-the-defendant and-a-recommendation-as-to-treatment-by-a--person--qualified by--professional--experience.--No-defendant-convicted-of-any other offense-that-may-result-in-commitment-for--1--year--or more--in--the--state--prison--may--be-sentenced-or-otherwise~~

~~disposed-of-before-a-written-report-of--investigation--by--a probation--officer--is--presented--to--and-considered-by-the court-unless-the-court-deems-such-report-unnecessary~~ to make a presentence investigation and report. The district court may, in its discretion, order a presentence investigation for a defendant convicted of ~~any-lesser-crime-or--offense~~ a misdemeanor.

(2) If the court finds that the record contains information sufficient to enable the meaningful exercise of discretion during sentencing, the defendant may waive a presentence investigation and report. Both the finding and the defendant's waiver must be made in open court on the record."

Section 220. Section 46-18-112, MCA, is amended to read:

"46-18-112. Content of presentence investigation report. (1) Whenever an investigation is required, the probation officer shall promptly inquire into and report upon:

(a) the defendant's characteristics, circumstances, needs, and potentialities ~~of-the-defendant~~;

(b) ~~his~~ the defendant's criminal record and social history;

(c) the circumstances of the offense;

(d) the time of the defendant ~~has-been-in~~ defendant's

detention for the offenses charged; and

(e) except in capital cases in which the death penalty may be imposed, the harm caused, as a result of the offense, to the victim, ~~his~~ the victim's immediate family, and the community.

(2) All local and state mental and correctional institutions, courts, and ~~police~~ law enforcement agencies shall furnish ~~the probation officer, on~~ upon request of the officer preparing a presentence investigation, the defendant's criminal record and other relevant information.

(3) The court may, in its discretion, require that the presentence investigation report ~~shall~~ include a physical and mental examination of the defendant ~~when it is desirable in the opinion of the court~~.

(4) If applicable, the court may require the officer to inquire into the victim's pecuniary loss and make a restitution report to the court as provided by law."

Section 221. Section 46-18-113, MCA, is amended to read:

"46-18-113. Availability of presentence investigation report ~~to--defendant--and--others~~. ~~(1) The judge may, in his discretion, make the investigation report or parts of it available to the defendants or others, while concealing the identity of persons who provided confidential information. If the court discloses the identity of persons who provide~~

~~information, the judge may, in his discretion, allow the defendant to cross-examine those who rendered information.~~

~~(2)~~ ~~Such reports shall~~ All presentence investigation reports must be a part of the court record but ~~shall be sealed and~~ may not be opened ~~only on order of the court~~ for public inspection. A copy of the presentence investigation report must be provided to the prosecution, the defendant and the defendant's attorney, and the agency or institution to which the defendant is committed.

(2) The court having jurisdiction of the case may permit other access to the presentence investigation report as it considers necessary.

~~(3) If a defendant is committed to a state institution, the investigation report shall be sent to the institution at the time of commitment.~~"

NEW SECTION. **Section 222.** Sentencing hearing. Before imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or finding of guilty, the court shall conduct a sentencing hearing, without unreasonable delay, as follows:

(1) The court shall afford the parties an opportunity to be heard on any matter relevant to the disposition, including the applicability of sentencing enhancement provisions, mandatory minimum sentences, persistent felony offender status, or an exception to these matters.

(2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided by 46-18-301.

(3) Except as provided in [sections 125 through 129], the court shall address the defendant personally to ascertain whether the defendant wishes to make a statement and to present any information in mitigation of punishment or reason why the defendant should not be sentenced. If the defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to do so.

(4) The court shall impose sentence or make any other disposition authorized by law.

(5) In felony cases, the court shall specifically state all reasons for the sentence, including restrictions, conditions, or enhancements imposed, in open court on the record and in the written judgment.

NEW SECTION. **Section 223.** Judgment. The judgment must set forth the plea, verdict or finding, and the adjudication. If the defendant is convicted, it must set forth the sentence or other disposition. The judgment must be signed and entered on the record.

NEW SECTION. **Section 224.** Correction of sentence. The court may correct an illegal sentence or disposition at any time and may correct a sentence imposed in an illegal manner within 120 days after the sentence is imposed or after

remand from an appellate court.

Section 225. Section 46-18-203, MCA, is amended to read:

"46-18-203. Revocation of suspended or deferred sentence. (1) ~~A judge, magistrate, or justice of the peace who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under 46-18-201 or his successor is authorized in his discretion to revoke the suspension or impose sentence and order the person committed. He may also, in his discretion, order the prisoner placed under the jurisdiction of the department of institutions as provided by law or retain such jurisdiction with his court.~~ Upon the filing of a petition for revocation, accompanied by an affidavit showing probable cause that the defendant has violated any condition of a sentence or any condition of a deferred imposition of sentence, the court may issue an order for a hearing on revocation. The order must require the defendant to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the defendant personally. The court may also issue an arrest warrant directing any peace officer or a probation officer to arrest the defendant and bring the defendant before the court.

(2) ~~A~~ The petition seeking for a revocation ~~of a~~

~~suspended--sentence--or--imposition-of-a-sentence-previously deferred~~ must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

~~(3) Prior-to-the-revocation-of-an-order--suspending--or deferring--the--imposition--of-sentence,-the-person-affected shall-be-given-a-hearing.~~ The provisions pertaining to bail, as set forth in [sections 72, 73, 76, 77], and Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the defendant must be brought before the court, and the defendant must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the defendant's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the defendant admits the allegations and waives the

right to a hearing; or

(b) the relief to be granted is favorable to the defendant, and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the defendant for the purposes of this subsection (b).

(6) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence. However, when a failure to pay restitution is the basis for the petition, the defendant may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the defendant's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) If the court finds that the defendant has violated the terms and conditions of the suspended or deferred sentence, the court may:

(a) continue the suspended or deferred sentence without a change in conditions;

(b) continue the suspended sentence with modified or additional terms and conditions;

(c) revoke the suspension of sentence and require the

defendant to serve either the sentence imposed or any lesser sentence; or

(d) if the sentence was deferred, impose any sentence that might have been originally imposed.

(8) If the court finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the defendant, if in custody, immediately released."

Section 226. Section 46-21-101, MCA, is amended to read:

"46-21-101. ~~Circumstances-in--which~~ When validity of sentence may be challenged. (1) A person adjudged guilty of an offense in a court of record who has no adequate remedy of appeal and who claims that a sentence was imposed in violation of the constitution or the laws of this state or the constitution of the United States, that the court was without jurisdiction to impose the sentence, that a suspended or deferred sentence was improperly revoked, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy may petition the court which that imposed

the sentence or the supreme court to vacate, set aside, or correct the sentence or revocation order.

(2) If the sentence was imposed by a justice's, municipal, or city court, the petition must be filed with the district court in the county where the lower court is located.

(3) If the person is in custody, the person may elect to file the petition directly with the supreme court."

Section 227. Section 46-21-102, MCA, is amended to read:

"46-21-102. When petition may be filed. A petition for ~~such~~ the relief referred to in 46-21-101 may be filed at any time ~~within-5-years-of-the-date-of-the-conviction.~~"

Section 228. Section 46-21-103, MCA, is amended to read:

"46-21-103. Commencement of proceedings. The proceeding for relief under 46-21-101 ~~shall~~ must be commenced by filing a verified petition with the clerk of the appropriate court ~~in-which-the-conviction-took--place--or--the--clerk--of--the supreme--court--a--verified-petition~~. The clerk shall docket the petition upon its receipt and bring the same petition promptly to the attention of the court."

Section 229. Section 46-21-104, MCA, is amended to read:

"46-21-104. Contents of petition. (1) The petition for

postconviction relief ~~shall~~ must:

(a) identify the proceeding in which the petitioner was convicted, give the date of the rendition of the final judgment complained of, and clearly set forth the alleged violation or violations~~.~~;

(b) identify any previous proceedings that the petitioner may have taken to secure relief from his conviction; and

(c) ~~The petition shall~~ have attached ~~thereto~~ any affidavits, records, or other evidence supporting its allegations or ~~shall~~ state why the ~~same are~~ evidence is not attached. ~~They shall identify any previous proceedings that the petitioner may have taken to secure relief from his conviction.~~

(2) The petition must be accompanied by a supporting memorandum, including appropriate arguments and citations and discussion of authorities."

Section 230. Section 46-21-105, MCA, is amended to read:

"46-21-105. ~~What~~ Waiver of grounds for relief ~~waived if not raised.~~ (1) All grounds for relief claimed by a petitioner under this chapter 46-21-101 must be raised in ~~his~~ the original or amended petition. ~~Any~~ Those grounds for relief not so raised are waived unless the court on hearing a subsequent petition finds grounds for relief asserted

~~therein which~~ that could not reasonably have been raised in the original or amended petition.

(2) When a petitioner has been afforded a direct appeal of ~~his~~ the petitioner's conviction, grounds for relief that could reasonably have been raised on direct appeal may not be raised in ~~his~~ the original or amended petition."

Section 231. Section 46-21-201, MCA, is amended to read:

"46-21-201. Proceedings on ~~the~~ petition. (1) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled to ~~no~~ relief, the court shall cause notice ~~thereof~~ of the petition to be served upon the county attorney in the county in which the conviction took place and upon the attorney general and order them to file a responsive pleading to the petition. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may grant a prompt hearing ~~thereon~~ on the petition, determine the issue, and make findings of fact and conclusions with respect ~~thereto~~ to the petition.

(2) If a hearing is required or the interests of justice require, the court shall appoint counsel for a petitioner who qualifies for the appointment of counsel under Title 46, chapter 8, part 1.

(3) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner the court has ordered or to which the parties have agreed.

~~(2)~~(4) The court may receive proof ~~by~~ of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

~~(3)~~(5) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and ~~such~~ any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the court finds for the ~~state~~ prosecution, ~~the petitioner shall be returned to the custody of the person to whom the writ was directed~~ petition must be dismissed."

Section 232. Section 46-21-202, MCA, is amended to read:

"46-21-202. ~~Record must be kept~~ of proceedings. A court ~~which entertains~~ that hears a petition pursuant to this chapter ~~must~~ shall keep a record of the proceedings and enter its findings and conclusions."

Section 233. Section 46-21-203, MCA, is amended to read:

"46-21-203. Review. Either the petitioner or ~~the state~~ prosecution may appeal to the supreme court ~~of Montana~~ from an order entered on ~~the~~ a petition. The appeal must be taken within 60 days of the entry of the order."

Section 234. Section 46-22-101, MCA, is amended to read:

"46-22-101. ~~Who may prosecute~~ Applicability of writ of habeas corpus. (1) Except as provided in subsection (2), every person imprisoned or otherwise restrained of ~~his~~ liberty within this state may prosecute a writ of habeas corpus to inquire into the cause of ~~such~~ imprisonment or restraint and, if illegal, to be delivered ~~therefrom~~ from the imprisonment or restraint.

(2) ~~Relief under this chapter~~ The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense in a court of record and has exhausted ~~his~~ the remedy of appeal, ~~nor is~~ the relief under this chapter is not available to attack the legality of an order revoking a suspended or deferred sentence. ~~Relief for such purposes is limited to the provisions of Title 46, chapter 21.~~"

Section 235. Section 46-22-102, MCA, is amended to read:

"46-22-102. No release for technical defects. A person may not be released on a writ of habeas corpus due to any

technical defect in commitment not affecting ~~his~~ the person's substantial rights."

Section 236. Section 46-22-201, MCA, is amended to read:

"46-22-201. Application for writ of habeas corpus. (1) Application for ~~the~~ a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or by some person ~~in--his~~ on the petitioner's behalf. It must specify:

(a) that ~~the person in whose behalf the writ is applied~~ for petitioner is unlawfully imprisoned or restrained of ~~his~~ liberty;

(b) why the imprisonment or restraint is unlawful; and

(c) ~~the--place~~ where and ~~the officer or person~~ by whom ~~he~~ the petitioner is so confined or restrained.

(2) All the parties must be named if they are known or otherwise described ~~if they are not known~~ so that they may be identified.

(3) The petition must be verified by the oath or affirmation of the party making the application."

Section 237. Section 46-22-202, MCA, is amended to read:

"46-22-202. ~~By whom issued and before whom returnable~~ Granting writ of habeas corpus. (1) The A writ of habeas corpus may be granted:

~~(1)~~ by any justice of the supreme court ~~or any justice~~ thereof or by any district court judge upon petition by or on behalf of any person restrained of ~~his~~ liberty ~~in this~~ state within the justice's or judge's jurisdiction.

(2) When so a writ of habeas corpus is issued, it may be made returnable before the issuing court ~~or any justice thereof or before any district court or judge thereof;~~

~~(2) by a district court or a judge thereof upon petition by or on behalf of any person restrained of his liberty in the court's or judge's respective district or county.~~"

Section 238. Section 46-22-203, MCA, is amended to read:

"46-22-203. Writ granted without delay. Any court justice or judge authorized to grant the a writ of habeas corpus ~~to whom a petition therefor is presented must~~ shall grant the writ without delay if it appears that the a writ ought to issue, ~~grant the same without delay.~~"

Section 239. Section 46-22-204, MCA, is amended to read:

"46-22-204. Writ and process may issue at any time. Any The writ of habeas corpus or any associated process ~~authorized by this chapter~~ may be issued and served on any day or at any time."

Section 240. Section 46-22-205, MCA, is amended to

read:

"46-22-205. ~~Contents~~ Form of writ. (1) The writ of habeas corpus must be directed to the person having custody of or restraining the person on whose behalf the application is made and must command ~~him~~ that person to have the ~~body of such person~~ petitioner before the ~~court or~~ judge before whom the writ is returnable at a time and place ~~therein~~ specified.

(2) The issue or issues to be determined upon return of the writ may be stated either in the writ or in an order attached to the writ. If the ~~issue or~~ issues to be determined ~~upon return of the writ~~ are not stated ~~therein~~ in the writ or in an attached order ~~attached thereto~~, then a copy of the petition must be attached to the writ."

Section 241. Section 46-22-206, MCA, is amended to read:

"46-22-206. Service of writ. (1) The writ of habeas corpus must be served upon the person to whom it is directed. If ~~the person to whom~~ the writ is directed ~~represents~~ to a state institution, a copy of the writ ~~shall~~ must be served upon the attorney general. If ~~such person represents~~ the writ is directed to a county ~~institution~~ facility, a copy of the writ ~~shall~~ must be served upon the county attorney.

(2) The writ ~~shall~~ must be served by the clerk of

court, the sheriff, or any other ~~officer~~ person directed to do so by the court.

(3) The writ ~~shall~~ must be served in the same manner as a summons in civil actions, except when otherwise expressly directed by the ~~court or~~ judge."

Section 242. Section 46-22-301, MCA, is amended to read:

"46-22-301. ~~Contents of return~~ Return of service. (1) The person upon whom the writ is served ~~must~~ shall make a return and state in ~~his~~ that return:

(a) (i) whether ~~he has~~ the party petitioner is in ~~his~~ that person's custody or under ~~his~~ that person's power or restraint; and

~~(b)~~(ii) if ~~he has~~ the party petitioner is in ~~his~~ custody or ~~under his power or restraint~~ otherwise restrained, the authority for and cause of ~~such~~ the custody or restraint; ~~or if the detention is by legal process, a copy thereof must be annexed to the response;~~

~~(c)~~(b) if ~~he had~~ the party ~~in his custody or under his power or restraint at any time prior or subsequent to the date of the writ~~ but petitioner has been transferred ~~such~~ to the custody of or restraint to otherwise restrained by another, particularly to whom the party was transferred, ~~at~~ what the time and place of the transfer, ~~for what cause~~ the reason for the transfer, and by what the authority ~~such~~

under which the transfer took place.

(2) The return must be signed and verified by oath unless the person making the ~~same-and,-except-when-such~~ person return is a sworn public officer ~~and--makes--such~~ making a return in ~~his~~ an official capacity, ~~it-must-be verified-by-his-oath.~~"

Section 243. Section 46-22-302, MCA, is amended to read:

"46-22-302. ~~Production--of--person------exception---for infirmity--or--illness~~ Appearance of petitioner. (1) The person commanded by the writ shall bring the ~~detained-person according-to-the-command-of~~ petitioner before the court as required by the writ unless ~~it--is--made--to--appear-by affidavit-that-because-of-sickness-or-infirmity-such--person~~ the petitioner cannot be brought before the ~~judge~~ court without danger to ~~his~~ the petitioner's health. Sickness or infirmity must be confirmed in an affidavit by the person having custody of the petitioner.

(2) If the ~~judge~~ court is satisfied with the truth of the affidavit, ~~he~~ the court may proceed and dispose of the case as if the ~~party--had--been--produced~~ petitioner were present or the hearing may be postponed until the ~~party-can be~~ petitioner is present."

Section 244. Section 46-22-303, MCA, is amended to read:

"46-22-303. Refusal to obey writ -- contempt. If the person commanded by the writ refuses to obey, ~~he-shall~~ that person must be adjudged in contempt of court."

Section 245. Section 46-22-304, MCA, is amended to read:

"46-22-304. Hearing on return. ~~(1)~~ The court ~~or--judge~~ before whom the writ is returned ~~must~~ shall immediately ~~after-the-return~~ proceed to hear and examine the return.

~~(2)~~ The hearing ~~on-the-writ~~ may be summary in nature."

Section 246. Section 46-22-305, MCA, is amended to read:

"46-22-305. Production of evidence -----depositions. Evidence may be produced and compelled in preparation of a hearing as provided in ~~civil-actions~~ Title 46, chapter 22. ~~Depositions--taken--in--accordance-with-the-Montana-Rules-of Civil-Procedure-may-be-read-as-evidence-at--the--hearing--on the-writ.~~"

Section 247. Section 46-22-306, MCA, is amended to read:

"46-22-306. Disposition of petitioner. (1) If the court finds in favor of the petitioner, ~~it--shall--enter~~ an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and ~~such~~ any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper.

(2) If the court finds for the ~~state~~ prosecution, the petitioner ~~shall~~ must be returned to the custody of the person to whom the writ was directed."

Section 248. Section 46-22-307, MCA, is amended to read:

"46-22-307. Appeal by ~~state~~ prosecution. An appeal may be taken to the supreme court by the ~~state~~ prosecution from an order of judgment discharging the petitioner. The court may admit the petitioner to bail pending appeal as provided in 46-9-103. The appeal ~~shall~~ must be taken in the same manner as in civil actions."

Section 249. Section 1-1-202, MCA, is amended to read:

"1-1-202. Terms relating to procedure and the judiciary. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) A "deposition" ~~is~~ means a written declaration under oath or affirmation, made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine.

(2) "Judicial officers" means justices of the supreme court, judges of the district courts, justices of the peace, municipal judges, and city judges.

(3) A "judicial record" ~~is~~ means the record of official entry of the proceedings in a court of justice or of the official act of a judicial officer in an action or special proceeding.

(4) "Magistrate"--means--any---officer---described---~~in~~ 46-1-201~~(5)~~.

~~(5)~~ An "oral examination" ~~is~~ means an examination in the presence of the jury or tribunal ~~which~~ that is to decide the fact or act upon it, or the testimony being heard by the jury or tribunal from the lips of the witness.

~~(6)~~(5) "Process" means a writ or summons issued in the course of judicial proceedings.

~~(7)~~(6) For purposes of legal notification, the term "registered mail" ~~includes~~ means registered or certified mail.

~~(8)~~(7) "Testify" ~~includes~~ means every mode of oral statement under oath or affirmation.

~~(9)~~(8) "Writ" means an order in writing issued in the name of the state or of a court or judicial officer."

Section 250. Section 1-1-207, MCA, is amended to read:

"1-1-207. Miscellaneous terms. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Bribe" means anything of value or advantage, present or prospective, or any promise or undertaking to give anything of value or advantage, which that is asked, given, or accepted with a corrupt intent to unlawfully influence the person to whom it is given in his action, vote, or opinion in any public or official capacity.

(2) "Peace officer" ~~means--any--person--described--in 46-1-201(8)~~ has the meaning as defined in [section 2].

(3) "Vessel", when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place."

Section 251. Section 7-16-2322, MCA, is amended to read:

"7-16-2322. Rules and ordinances to implement part. (1) (a) A county park board, in addition to powers and duties now given under law, has the following powers and duties:

(i) to make rules necessary or convenient to protect and promote the improvement of land and facilities under the care and control of ~~said~~ the board and for the protection of birds and animals inhabiting or frequenting land and facilities in parks and public places;

(ii) to make rules for the use of land and facilities by the public; and

(iii) to provide penalties for the violation of ~~such~~ the rules.

(b) The rules authorized by subsection (1) have the force of resolutions of the county commissioners.

(2) The county governing body, by the adoption of an ordinance in substantial compliance with the provisions of

7-5-103 through 7-5-107, may:

(a) provide that violations of specific rules adopted pursuant to subsection (1) constitute criminal offenses and are punishable as provided in 7-5-109; and

(b) authorize a county park board to employ a county park warden to enforce park rules and ordinances. A county park warden is not a peace officer, as defined in ~~46-1-201~~ [section 2]. The law enforcement powers of a park warden are limited to issuing citations charging violations of park ordinances and rules."

Section 252. Section 7-32-201, MCA, is amended to read:

"7-32-201. Definitions. As used in this part, the following definitions apply:

(1) "Auxiliary officer" means an unsworn, part-time, volunteer member of a law enforcement agency who may perform but is not limited to the performance of such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities.

(2) "General law enforcement duties" means patrol operations performed for detection, prevention, and suppression of crime and the enforcement of criminal and traffic codes of this state and its local governments.

(3) "Law enforcement agency" means a law enforcement service provided directly by a local government.

(4) "Law enforcement officer" means a sworn, full-time,

employed member of a law enforcement agency who is a peace officer as defined in ~~46-1-201(8)~~ [section 2] and has arrest authority as described in 46-6-401.

(5) "Reserve officer" means a sworn, part-time, volunteer member of a law enforcement agency who is a peace officer as defined in ~~46-1-201(8)~~ [section 2] and has arrest authority as described in 46-6-401 only when authorized to perform these functions as a representative of the law enforcement agency."

Section 253. Section 7-32-233, MCA, is amended to read:

"7-32-233. Limitation on arrest authority of auxiliary officer. An auxiliary officer has only the arrest authority granted a private person in 46-6-502 ~~and 46-6-503~~."

Section 254. Section 7-32-4303, MCA, is amended to read:

"7-32-4303. Control of shoplifting. The city or town council may define shoplifting ~~as provided in 46-6-501~~ and punish persons found guilty ~~thereof~~ of shoplifting."

Section 255. Section 16-11-147, MCA, is amended to read:

"16-11-147. Seizure and forfeiture of unlawful cigarettes. (1) Any motor vehicle, airplane, conveyance, vehicle, or other means of transportation in which cigarettes are being unlawfully transported, together with the cigarettes and other equipment or personal property used

in connection with ~~such~~ and found in that transportation ~~and found in such means of transportation, shall be~~ is subject to seizure by the department, its duly authorized agent, any sheriff or deputy, or other peace officer and ~~shall be~~ is subject to forfeiture in the manner ~~hereinafter~~ provided in subsection (2).

(2) Upon the seizure of any cigarettes and within 2 days thereafter, the person or officer making ~~such~~ the seizure shall deliver an inventory of the property seized to the person from whom ~~such~~ the seizure was made, if known, and file a copy ~~thereof~~ of the inventory with the department. The person from whom the seizure was made or any other person claiming an interest in the property seized may apply for its return as provided in ~~46-5-302~~ 46-5-303 through 46-5-305."

Section 256. Section 37-60-406, MCA, is amended to read:

"37-60-406. Peace officer's casual employment. A peace officer, as defined in ~~46-1-201~~ [section 2], or a reserve officer, as defined in 7-32-201, is not prohibited or restricted from accepting and engaging in employment as a security guard during his off-duty hours, provided that he does not advertise his services or solicit employment and further provided that the chief of his department previously approves the off-duty employment. A peace officer or reserve

officer ~~so~~ engaged in casual employment is exempt from the provisions of this chapter only if the casual employment is authorized in writing by his sheriff or chief of police."

Section 257. Section 44-11-303, MCA, is amended to read:

"44-11-303. Definitions. When used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Law enforcement agency" means a public agency lawfully established by statute or executive order that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, or game laws.

(2) "Law enforcement agency of this state" or "law enforcement agency of another (or any other) state" includes, respectively, a law enforcement agency of a political subdivision of this state and a law enforcement agency of a political subdivision of another state.

(3) "Mutual aid agreement" or "agreement" means an agreement between two or more law enforcement agencies, consistent with the purposes of this part.

(4) "Party law enforcement agency" means a law enforcement agency that is a party to a mutual aid agreement as set forth in this part.

(5) "Peace officer" has the meaning as ~~the term is~~ defined in ~~46-1-201~~ [section 2]."

Section 258. Section 45-5-206, MCA, is amended to read:

"45-5-206. Domestic abuse. (1) A person commits the offense of domestic abuse if he:

(a) purposely or knowingly causes bodily injury to a family member or household member; or

(b) purposely or knowingly causes reasonable apprehension of bodily injury in a family member or household member. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused ~~shall~~ must be presumed in any case in which a person knowingly points a firearm at or in the direction of a family member or household member, whether or not the offender believes the firearm to be loaded.

(2) For the purposes of [section 32] and this section ~~and~~ ~~46-6-401~~, "family member or household member" means a spouse, former spouse, adult person related by blood or marriage, or adult person of the opposite sex residing with the defendant or who formerly resided with the defendant.

(3) A person convicted of domestic abuse for the first or second time shall be fined not to exceed $500 or be imprisoned in the county jail not to exceed 6 months, or both. On a third or subsequent conviction for domestic abuse, the person convicted shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

(4) (a) A person convicted of domestic abuse for the first or second time shall be required to pay for and complete at least 6 months of counseling, totaling at least 25 hours:

(i) with a person licensed under Title 37, chapter 3, 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the convicted person. Subsection (4)(a) does not prohibit the placement of the convicted person in other appropriate treatment if the court determines there is no available treatment program directed to the violent conduct of the convicted person.

(5) Willful failure to obtain or pay for counseling ordered under this section is a civil contempt of court."

Section 259. Section 45-8-209, MCA, is amended to read:

"45-8-209. Harming a police dog -- penalty. (1) A person commits the offense of harming a police dog if he purposely or knowingly shoots, kills, or otherwise injures a police dog being used by a law enforcement officer in discharging or attempting to discharge any legal duty in a reasonable and proper manner.

(2) A person convicted of the offense of harming a police dog may be fined an amount not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 1 year, or both.

(3) As used in this section, the following definitions apply:

(a) "Law enforcement officer" means a person who is a peace officer as defined in ~~46-1-201~~ [section 2].

(b) "Police dog" means a dog that is:

(i) used by a law enforcement agency, as defined in 7-32-201, in the exercise of its authority;

(ii) specifically trained for law enforcement work; and

(iii) under the control of a law enforcement officer."

Section 260. Section 46-4-306, MCA, is amended to read:

"46-4-306. Applicability of other laws -- costs. (1) The fees and mileage of witnesses subpoenaed pursuant to this part ~~shall be~~ are the same as those required in criminal actions. The state shall bear all costs, including the cost of service, when the application for the subpoena is made by the attorney general, and the appropriate county shall bear all costs, including the cost of service, when the application for the subpoena is made by a county attorney.

(2) All provisions relating to subpoenas in criminal actions apply to subpoenas issued pursuant to this part,

including the provisions of ~~46-15-111~~ 46-15-112 through 46-15-114."

Section 261. Section 46-10-201, MCA, is amended to read:

"46-10-201. When examination not public. The ~~justice~~ judge may, in ~~his~~ the judge's discretion, and ~~must~~ shall, upon the request of the defendant, exclude from the preliminary examination ~~every~~ each person not officially associated with the case before the court."

Section 262. Section 46-15-326, MCA, is amended to read:

"46-15-326. Use of materials. Except as provided in 46-11-401, any materials, including witness lists, furnished to an attorney pursuant to ~~46-15-321~~ 46-15-322 through 46-15-329 may not be disclosed to the public but may be disclosed to others only to the extent necessary for the proper conduct of the case."

Section 263. Section 46-16-103, MCA, is amended to read:

"46-16-103. Who decides questions of law and fact. (1) All prosecutions deciding issues of fact must be tried by the court and jury, except on a plea of guilty.

(2) Questions of law must be decided by the court and questions of fact by the jury, except that on a trial for criminal defamation, the jury shall determine both questions of law and of fact. Questions of law and fact must be decided by the court when a trial by jury is waived under 46-16-102~~(2)~~(3)."

NEW SECTION. **Section 264.** Repealer. Sections 46-1-101, 46-1-102, 46-1-201, 46-3-103, 46-3-201, 46-3-202, 46-3-203, 46-3-204, 46-3-205, 46-3-206, 46-5-104, 46-5-201, 46-5-302, 46-5-501, 46-5-503, 46-5-504, 46-5-505, 46-6-101, 46-6-103, 46-6-301, 46-6-501, 46-6-503, 46-8-112, 46-9-101, 46-9-204, 46-9-303, 46-9-404, 46-9-411, 46-9-413, 46-10-101, 46-11-202, 46-11-204, 46-11-312, 46-11-333, 46-11-402, 46-11-501, 46-12-101, 46-12-103, 46-13-102, 46-13-103, 46-13-105, 46-15-111, 46-15-203, 46-15-321, 46-15-401, and 46-16-108, MCA, are repealed.

NEW SECTION. **Section 265.** Codification instruction. [Sections 1 through 3, 29, 32, 41, 44, 46, 49, 51, 52, 72, 73, 76, 77, 86, 97, 98, 105, 107, 108, 112, 125 through 130, 135, 136, 143, 154, 171, 176 through 178, 182, 200, 201, 205, 213, and 222 through 224] are intended to be codified as an integral part of Title 46, and the provisions of Title 46 apply to [sections 1 through 3, 29, 32, 41, 44, 46, 49, 51, 52, 72, 73, 76, 77, 86, 97, 98, 105, 107, 108, 112, 125 through 130, 135, 136, 143, 154, 171, 176 through 178, 182, 200, 201, 205, 213, and 222 through 224].

-End-

SB 0051/01

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for SB0051, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise the laws relating to criminal procedure.

ASSUMPTIONS:

1. The bill revises many sections of the criminal codes but essentially revises language without having material fiscal impact other than in the category of autopsies.
2. Under current law, an estimated 500-600 autopsies are performed statewide annually. It is estimated that the total will increase to 700 per year if the costs of all autopsies are to be funded by the state.
3. The average cost of one autopsy is estimated to be $1,000, with $700 of that cost attributable to pathologist fees.
4. The State Medical Examiner will perform 125 of the 700 total autopsies per year and the pathologist fee is eliminated for these autopsies performed by the state examiner. (125 autopsies x $300 = $37,500, plus 575 autopsies @ $1,000 each.)
5. Current law in the fiscal impact schedule uses the Governor's Executive Budget for the Forensic Science Division of the Department of Justice, which includes the position of the State Medical Examiner.

FISCAL IMPACT:

see next page

Rod Sundsted 1-12-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Fred Van Valkenburg 1-14-91
FRED VAN VALKENBURG, PRIMARY SPONSOR DATE

Fiscal Note for SB0051, as introduced

SB 51

Department of Justice-Forensic Science Division

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Expenditures:						
FTE	17.00	17.00	0.00	17.00	17.00	0.00
Personal Services	685,587	685,587	0	685,745	685,745	0
Operating Costs	280,985	893,485	612,500	282,163	894,663	612,500
Equipment	135,000	135,000	0	60,000	60,000	0
Total	1,101,572	1,714,072	612,500	1,027,908	1,640,408	612,500
Funding:						
General Fund (01)	873,622	1,486,122	612,500	814,673	1,427,173	612,500
State Special (02)	227,950	227,950	0	213,235	213,235	0
Total	1,101,572	1,714,072	612,500	1,027,908	1,640,408	612,500

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

County expenditures for autopsies will be reduced generally by the average cost per autopsy shown above.

SB 51

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for SB0051, second reading.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise the laws relating to criminal procedure.

ASSUMPTIONS:

1. The bill revises many sections of the criminal codes but essentially revises language without having a material fiscal impact.

FISCAL IMPACT:

No material fiscal impact.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

No material effect.

Rod Sundsted 2-6-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Fred R. Van Valkenburg 2-7-91
FRED R. VAN VALKENBURG, PRIMARY SPONSOR DATE

Fiscal Note for SB0051, second reading

SB 51
Second Reading

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on January 15, 1991, at 10:05 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: none

HEARING ON SENATE BILL 51

Presentation and Opening Statement by Sponsor:

Senator Fred VanValkenburg, District 30, announced that SB 51 may look familiar to those members of the Committee who were present during the 1989 legislative session. He said a bill was introduced in 1989 and was passed in substantially the same form as SB 51, but was subsequently tabled in House Judiciary.

Senator VanValkenburg explained that SB 51 is a product of nearly six years of work, begun in March, 1985. He said the Montana State Bar Association established the Criminal Procedure Referral Committee to update criminal procedure code to employ with case law. He stated that the code adopted by the 1967 Legislature was later amended and largely remained as it was originally adopted.

Senator VanValkenburg told the committee SB 51 contains some amendments to statutory criminal procedure code, and that it is always good to update statutory procedure and to eliminate some confusion. He added that it is inappropriate to have a lack of uniformity of code.

Senator VanValkenburg said the 1985 committee worked on the bill for three years and presented it to the State Bar and the Montana Supreme Court for adoption as rules late in 1988. He explained that Montana operates under rules of procedure. He stated that in January, 1989, the Montana Supreme Court decided to defer to the Legislature to adopt the proposed changes as statute instead rules.

Senator VanValkenburg advised the Committee that the Criminal Procedure Committee, essentially, decided to work on the proposal for an additional two years. He said that, in essence, the bill was voluntarily tabled in 1989, and a number of meetings were held during the past interim to further prepare the bill for adoption.

Senator VanValkenburg reported that the bill is approximately 220 pages long and was printed only last week. He said there was limited opportunity for interested members of the public to read the bill or consider any proposed amendments. Senator VanValkenburg stated that three participating interest groups have minor concerns overall. He specifically asked that the Committee allow these interests to be heard at executive session before taking action on the bill.

Proponents' Testimony:

Robert L. "Dusty" Deschamps, Missoula County Attorney, told the Committee he was appointed chair of the commission producing this bill. He stated that when the commission completed its work in the fall of 1988, copies were distributed to every clerk of court, district judge, and lawyer in the state. He explained that the changes occurring during the past two years are minor and have been public; that there has been extensive opportunity for people to provide input.

Mr. Deschamps stated it is impossible to find complete agreement on the content of the bill, i.e., on the issue of mental defects, for instance. He explained that the commission spent several days discussing this issue and resolved it by a margin of one vote.

Mr. Deschamps stated that areas of interest were highlighted in the bill, and said some provisions were added mandating special treatment for certified offenders while others were deleted. He said changes were made in search and seizure and bail, and that language now says "place of trial" instead of "change of venue". He advised the Committee that some procedures relating to search

and seizure were still being followed from 1962 when the code was enacted.

Mr. Deschamps said the bill allows for conditional guilty pleas, uniform time for pre-trial motions, and fewer than twelve jurors in certain instances. He added that, most importantly, the bill implements procedural rules used by the Montana Supreme Court for the past 25 years.

Mr. Deschamps stated there was an attempt to do away with special procedure in certain courts and to provide uniformity in city, justice, and district courts. He said the bill streamlines procedure and brings it into tune with modern practice.

Mr. John Connor, Bureau Chief, County Prosecutor Services, Department of Justice, said he was also representing the Montana County Attorneys Association and that he was a member of the criminal procedures commission.

Mr. Connor said he echoed statements made by Mr. Deschamps, and that the objective of the commission was to create workable rules and to streamline procedures. He stated there was an attempt to find out if procedures in different ares conformed to law, and that the commission was trying to establish a fair and legally acceptable product.

Mr. Connor advised that the procedures involved looking at current law, federal and uniforms rules of criminal procedure and at what would best suit Montana. He added that some adaptations were made.

Mr. Connor commented that a fiscal note on the bill applies to $700,000 for a provision in the bill for autopsies paid by the state. He added that it was his understanding that a life insurance policy bill would be introduced to fund these autopsies. Mr. Connor said that, right now, if autopsies are required, coroners may not have the funds to pay for them. He stated that arguments can be made pro or con, but the bill is a better product, on balance.

Mr. Allen Chronister, representing the Montana State Bar Association, urged the Committee to support and pass SB 51.

Mr. Bill Fleiner, Lewis and Clark County Undersheriff, and member of the Board of Directors, Montana Peace Officers Association, stated his support of the bill. He asked for the opportunity to look at the bill, and said it is a way of life for law enforcement in Montana.

Chairman Pinsoneault noted that the Committee would delay executive action to give interested persons enough time to review the bill, and he requested that Mr. Connor be present to answer questions from the Committee during executive session.

Opponents' Testimony:

There were no opponents of SB 51.

Questions From Committee Members:

Senator Crippen asked if any members of the defense bar were present; if they were not interested or were overwhelmed by the equity of the bill. Mr. Deschamps replied that a number of defense attorneys were on the commission, one of which was Mike Sherwood, Montana Trial Lawyers Association. He explained that Mr. Sherwood planned to be present, but was taken ill this morning. He said Gary Dorn, Joe Hagel, Judge Bart Erickson, Tom Olson, and Loble all participated.

Senator Crippen asked about the spousal abuse issue mentioned earlier, and if it were a codification of state law. Mr. Deschamps said the language makes it plain that it is talking about communication between spouses. He explained that current law is unclear on this subject.

Senator Crippen said he was concerned with the expansion of law on spousal abuse, and asked that this section be addressed in executive session. He asked if the bill would expand case law in this area or what is new. Mr. Deschamps referred to section 198 on page 175 of the bill.

Senator Towe complimented the commission on some of the bill, and asked if, in theory, the bill was taking existing law and making reference to it by general statement, rather than codification. Mr. Deschamps replied that was correct.

Senator Towe asked about language at the bottom of page 37 and said it is a classic example of his concerns with stop and frisk on pages 33-35 of the bill. Mr. Deschamps replied that law is on the books now, but case law could change. He referred to the Supreme Court language requiring "articularized suspicion", and said the language used to be reasonable cause.

Senator Towe asked if the identify of the person being stopped was the basis and if this were in the bill. Mr. Deschamps said he did not know if that was correct, but believed there had to be some suspicious activity going on.

Senator Towe said he was also concerned with spousal immunity wherein the bill would make limitations to community and not to acts. Mr. Deschamps replied that it would be narrowed down in Montana and is mainstream in other states. He stated that unique areas in the bill are highlighted, such as bail.

Senator Svrcek stated that SB 51 is a very broad bill, and that he is concerned with eroding the rights of accused and the civil rights of people. He asked if the Committee was merely codifying existing case law and allowing flexibility for future

case law to be incorporated without statutory changes. Senator VanValkenburg replied they are codified for the protection of the public and are then going to be a very valuable. He said the defense bar was very actively involved in this process, and that the American Civil Liberties Union of Montana (ACLU) had also commented on the bill (Exhibit #1). He said that with minor exceptions the bill is extremely well-prepared and well-written, and so probably more stringently protects the citizens of the state of Montana.

Senator Svrcek referred to the statement that the bill allows flexibility for future case law without coming before the Legislature, and asked how it would square these things with Montana constitutional law. Senator VanValkenburg replied that because they are trying to adopt the changes legislatively instead of through the Montana Supreme Court, the Legislature will always retain this authority. He added that if this were done through the Court the Legislature would be abdicating some of its authority to the courts.

Senator VanValkenburg referred to search procedure on page 37, section 47, lines 24-25, and said that general language is found other places in the bill, so that particular provision cannot be interpreted there.

Chairman Pinsoneault asked if the information provided is sufficient to cover the concerns of committee members. Senator VanValkenburg replied that the Department of Institutions has concerns with the abilities of the Department to appeal to district courts regarding release from the state hospital. He added that more information will be forthcoming to the Committee, as the State Auditor has concerns with immunity and subpoena as it affects securities violations in the state.

Senator Doherty asked about the flexibility in future case law, and if the commission were looking to the federal constitution or some instructions to the Montana state constitution. Senator VanValkenburg replied he was talking about flexibility with respect to both federal and state constitutions.

Senator Towe asked Mr. Deschamps and Mr. Connor if they objected to the ACLU suggestions, and said he would like to see an amendment to require that a person stopped does not have to talk and would not be obstructing justice. Mr. Connor replied that in the State of Montana vs Gopher, stop and frisk provisions were more strict than they are in SB 51.

Closing by Sponsor:

Senator VanValkenburg again asked that the Committee wait seven to ten days before taking executive action on the bill. He advised committee members that the fiscal note was signed yesterday and is about $1.2 million rather than the $700,000 announced earlier. He added that this is a policy choice to be made by the

Legislature with respect to ordering autopsies, and said the bill itself has no significant costs.

HEARING ON SENATE BILL 53

Presentation and Opening Statement by Sponsor:

Senator Gerry Devlin, District 13, called SB 53 a business enhancement bill, and said shaking dice for a drink or the juke box is done all over the state. He added that establishments do not take part of the pot.

Senator Devlin advised the Committee that unless these games are specifically listed in statute, they are considered to be illegal. He said he did not like the language on line 25, page 1 of the bill, and would change it from "poker hand" to "winning combination". Senator Devlin said he believes the games don't hurt anyone and that he wanted to eliminate gray area in this situation.

Proponents' Testimony:

Larry Akey, Gaming Industry Association, echoed statements made by Senator Devlin.

Mark Staples, Montana Tavern Association, stated this is not a true gaming situation, but is a custom of rural taverns.

Opponents' Testimony:

Lois Menzies, Administrative Officer, Gambling Control Division, Department of Justice, testified for Bob Robinson, Division Administrator, and read from a prepared statement in opposition to the bill (Exhibit #2).

Questions From Committee Members:

Senator Mazurek asked Larry Akey why the Gaming Association wants the bill if it has nothing to do with gaming. Mr. Akey replied that the bill simply removes gray area for players, but is not higher on the list.

Senator Mazurek asked if shaking dice could be subject to expansion if the bill were to pass. Mr. Akey replied that he did not believe it would be a problem.

Senator Towe asked Senator Devlin for his comment on the Gambling Division's proposed amendments. Senator Devlin replied he had no problem with the amendments.

Chairman Pinsoneault, addressing Lois Menzies, stated that it was his understanding that once these sanctions were given it would

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 15 Jan 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 4 Feb 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

VISITORS' REGISTER

Senate Judiciary COMMITTEE

BILL NO. ~~none~~ SB 51 DATE 15 Jan 91

SPONSOR Van Valkenburg

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
J Michael O'Hara	~~Missoula County~~		
Robert L. Deschamps	Missoula	✓	
John Connor	Helena	✓	
Ellen Chronister	State Bar	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Exhibit #1
SB 51

ACLU OF MONTANA
AMERICAN CIVIL LIBERTIES UNION
P. O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086

State Office
335 Stapleton Building
Billings, Montana 59101

BOB ROWE
President

SCOTT CRICHTON
Executive Director

JEFFREY T. RENZ
Litigation Director

January 10, 1991

Sen. Fred Van Valkenburg
Capitol Station
Helena, Montana 59620

RE: Senate Bill 51

Dear Fred:

At Scott Crichton's request, I have reviewed SB 51, the proposed revision of the Criminal Procedure Code. Overall, I think someone has done an excellent job. I have several criticisms that I think should be addressed by amendment. I have told Scott that the ACLU should take no position on the bill, other than to oppose the provision regarding road blocks, since it appears that most of the wrinkles have been worked out between the prosecutors and the defense bar.

My specific criticisms follow:

Section 42. This is the Investigative Stop provision. My only observation is that it might be wise to revise the language to more closely follow Terry v. Ohio, that is, that the officer may ask questions about matters that gave rise to his particularized suspicion. You may want to codify the rule that the person stopped does not have to answer. There has been a tendency to charge such persons with obstructing a peace officer.

Section 153. This is one of the amendments to the mental disease and defect provisions. This does not comply with Smith v. McCormick, Ake v. Oklahoma, or Estelle v Smith. Smith and Ake make it clear that the Defendant is entitled to his own mental health expert to assist him in identifying both defenses to the charge and factors in mitigation of sentence. This is an ongoing problem (Smith's sentence was overturned and the death sentence in State v. Dawson is likely to be overturned) because of the consistent use of "court-appointed" experts, which means Drs. Van Hassel, Xanthopolous, or Stratford. The rule is that the accused gets his own expert, who becomes part of the defense team for purposes of the sixth amendment, and is not compelled to release the expert's report or anything else unless he decides to call the expert to testify.

Ex. 1
1/15/91
SB51

Section 216(2). To ensure that a waiver of a jury is knowingly made, I would recommend that this subsection be amended to provide for a written waiver or a waiver on the record. There is currently a case on appeal to the Montana Supreme Court where a city prosecutor claims that the defendant/appellant waived a jury trial. The defendant claims otherwise. Fortunately the current law required the waiver to be on the record. The facts are exacerbated by a Gallatin County practice (unpublished) that requires a jury demand to be included in the notice of appeal from city or justice court. You can see the potential for problems. The only way to ensure that there is no future dispute or a false claim by a defendant is to maintain a record of the waiver.

Thank you for considering these observations.

Cordially,

Jeffrey T. Renz
Legal Director

Senator Mazurek asked if this were necessary in view of bail hearings.

Senator Doherty asked Representative Brown if he meant to include people who have served their time. Representative Brown replied he did, but he was less concerned with individuals at Montana State Prison, as communities are notified when felons get out. He said the bill tries to protect families and/or communities by forewarning them.

Senator Doherty asked if subsection 3 would be an excessive delegation of power to a neighborhood watch group, for instance. Representative Brown replied that Billings and Great Falls are good examples, as their jails are in residential districts, and that this was the reason for Representative Clark's amendment.

Senator Towe asked Sheriff Petorovich if that were a slight to sheriff's. Sheriff Petorovich replied the language was added for the purpose of protecting victims, but he could live without it.

Closing by Sponsor:

Representative Brown advised the Committee he would not oppose elimination of subsection 3 of the bill. He said Senator Lynch would carry HB 114.

EXECUTIVE ACTION ON SENATE BILL 51

Motion:

Discussion:

John Connor, Department of Justice, said his department had no problems with the DOI amendments.

Valencia Lane reported that the DOI amendment returns that section of law to existing language.

Amendments, Discussion, and Votes:

Senator Mazurek made a motion that the DOI amendments to SB 51 be approved. The motion carried unanimously.

John Connor proposed striking section 63 on page 47 of the bill, and said it would have the effect of leaving the present law as it is.

Senator Towe made a motion that section 63 be deleted. The motion carried unanimously.

Senator Pinsoneault made a motion that the counties assume the cost of autopsies on page 14, section 11, subsection 4, lines 6-12. John Connor explained that the proposed amendment would remove the impact of the fiscal note, and said when the Commission was working on this issue it did not discuss cost. The motion made by Senator Pinsoneault carried unanimously.

John Connor suggested striking lines 9-10, subsection 4, in section 174, on page 156 of the bill. He explained it would read, "is admissible". He said the existing language is essentially contrary to federal law if used for involuntarily obtained confession for impeachment purposes.

Senator Towe made a motion that the section referred to by John Connor be returned to its original language. John Connor added that he thought striking the entire subsection would leave the issue up to case law rather than addressing it statutorily. The motion carried unanimously.

John Connor advised the Committee that lines 11-13, section 227, on page 200, now allow filing of petitions for post-conviction relief at anytime. He said language in the bill provides a period of five years, and that this is impossible for defense as well as prosecution. John Connor stated that county attorneys had HB 198 reduced from five years to one year, and then tabled the bill in order to deal with the issue in this bill. He said he believes it is better to leave the language as it is in the law now, and advised the Committee that Jennifer Anderson, Office of the Attorney General, is on the "habeas corpus" task force.

Senator Pinsoneault said he knew of no one who has suffered from this provision being in the law. John Connor added that cases go on and on, and said he was concerned that matters could go on interminably. He said that if not reduced to one year, it will remain at five years.

Senator Mazurek made a motion that existing stricken language be reinserted on line 13, section 227, page 200. Randi Hood stated she did not believe five years is inappropriate, as most petitions are against defense lawyers. The motion made by Senator Mazurek carried unanimously.

Recommendation and Vote:

Senator Mazurek made a motion that SB 51 DO PASS AS AMENDED.

Senator Crippen commented that there is substantial expansion of the ability of a spouse to testify, on page 175, section 198. John Connor replied that is a change, but it is consistent with the majority of states. He explained there are exceptions, such as

confidential communication, and that this is followed in about 50 percent of the states.

Senator Crippen further commented that it "stands in my mind the spouse cannot testify against a spouse". Jennifer Anderson, Office of the Attorney General, replied there is a significant expansion and that the amendment provides a spouse may testify and makes Montana law consistent with the majority of states. She said the language tries to address situations when a spouse is charged with a crime against the other spouse, and added that no state puts a prohibition on absolute spousal communication.

Senator Towe stated he was concerned from a societal matter in limited protection. He asked if the bill were not saying a spouse could be forced to testify with regard to what happened, and not what was said. Senator Towe commented that he would like to change this language.

Senator Pinsoneault commented the he liked how the bill was written. John Connor stated that spousal privilege is established by common law and case law to protect communications between spouses and to preserve the sanctity of the marriage. He said the Commission view that a crime does not go with the sanctity of the marriage.

Mike Sherwood told the Committee he was a member of the Commission, and said there was a lot of give and take in the bill. He stated he did not believe the language in the bill now is radical, but if a marriage were broken up and charges were made by the wife of abuse against children, he would allow the wife to testify. Mr. Sherwood said he believes that exception is in statute now.

Senator Towe stated he was worried abut where the county attorney brings the spouse in by subpoena and asks about something that is not a crime.

Senator Pinsoneault suggested that the bill be amended on the floor. He commented that a Commission worked on the bill, and said that since no one likes the bill it must be pretty good. Senator Crippen agreed with Senator Pinsoneault.

Senator Mazurek asked what kind of printing problem would be created if the bill were amended on the floor. Valencia Lane replied there would be substantial printing costs because of the size of the bill.

Senator Rye suggested passing on the bill for the day. Senator Mazurek withdrew his motion.

EXECUTIVE ACTION ON SENATE BILL 51

Motion:

Discussion:

Chairman Pinsoneault reminded the Committee they still need to address spousal immunity.

Amendments, Discussion, and Votes:

Senator Towe stated the amendment is a compromise (Exhibit # 2). He went through the amendment with the Committee, and said that if the defense is an alibi, the spouse would be protected. He stated that if the spouse were in the car and saw the other spouse pull a gun and rob someone, then that spouse would be required to testify.

Senator VanValkenburg told the Committee he hoped they would not adopt the amendment proposed by Senator Towe. He stated that, while it is somewhat better than the law is now as far as criminal defense is concerned, it is not consistent with other states and may undermine good public policy. Senator VanValkenburg said the policy of preserving the marriage should not protect an individual who is taking lives or causing severe damage to the property of others.

Senator VanValkenburg advised the Committee the six-year study commission was rightfully concerned with protecting spousal communication. He provided an example whereby a spouse is cleaning the home and finds a murder weapon and turns it in to the police. Senator VanValkenburg explained that murder weapon would not be admissible, as the spouse could not testify under Senator Towe's proposed amendment.

Chairman Pinsoneault stated he believes Senator Towe's proposed amendment is a hollow effort.

Senator Crippen said he supported the amendment, and that it did not go far enough. He added that public policy may not be good rationale.

Senator Towe asked John Connor, Department of Justice, if he objected to the amendment. Mr. Connor replied that he feels as Senator VanValkenburg does, and that the bill, as drafted, is the best alternative. He reported that one member of the study commission did not agree, but the language in the bill is consistent with the majority of states. Mr. Connor stated the vote was close and may include both prosecutors and defense attorneys.

Senator Towe asked how many states make up that majority. John Connor replied that more states follow the language in the bill than don't.

Senator Towe made a motion that his proposed amendments be approved. He said he believes a majority of 17 states is not enough and that marriage ought to be protected and preserved. He stated that the problem with Senator VanValkenburg's example, is who the pistol came from. He added that he is "getting at minor offenses wherein the spouse may be called".

The motion made by Senator Towe failed in a roll call vote, 5 to 6 (attached). Representative Harp was excused and did not leave a vote.

Recommendation and Vote:

Senator Mazurek made a motion that SB 51 DO PASS AS AMENDED. the motion carried with all members voting aye, except Senator Crippen who voted no.

EXECUTIVE ACTION ON HOUSE BILL 114

Motion:

Discussion:

Valencia Lane provided copies of proposed amendments and explained that page 2, lines 14-16 delete "any judge" and insert "a district court judge" (Exhibit #3).

Senator Towe stated that language in the amendment, "which sent.....by court" should be deleted. He said the intent really was that any district court wanting to be notified should be notified.

Senator Mazurek asked if language should say "a judge or a court".

Amendments, Discussion, and Votes:

Senator Towe made a motion that the amendment be changed to read "a court", and that lines 17-20, subsection 3, on page 2 be deleted. The motion carried unanimously.

Recommendation and Vote:

Senator Towe made a motion that HB 114 DO PASS AS AMENDED. The motion carried unanimously.

SENATE STANDING COMMITTEE REPORT

February 4, 1991

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration Senate Bill No. 51 (first reading copy -- white), respectfully report that Senate Bill No. 51 be amended and as so amended do pass:

1. Title, line 14.
Strike: "46-5-305,"

2. Page 14, line 9.
Strike: "is ordered as provided in this part."
Insert: "or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the county attorney or county coroner."

3. Page 47, line 18 through page 48, line 5.
Strike: section 63 in its entirety
Renumber: subsequent sections

4. Page 148, line 15.
Strike: "A"
Insert: "Either the director or a"

5. Page 148, line 18.
Following: "that"
Insert: ":"

6. Page 148, line 19.
Following: "~~(a)~~"
Insert: "(a)"

7. Page 148, lines 19 and 20.
Following: "~~a~~"
Strike: "has been cured of the"
Insert: "no longer suffers from a"
Following: "~~,~~"
Insert: ";"

8. Page 148, line 21.
Following: line 20
Insert: "(b) the defendant's mental disease or defect no longer renders him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law; or

(c) the defendant suffers from a mental disease or defect that makes him a danger to himself or others, but either there is no treatment available for his mental disease or defect or he refuses to cooperate with treatment"

9. Page 149, line 4.
Following: "~~(4)~~"
Insert: "(4)"

10. Page 156, lines 9 and 10.
Following: "~~not~~"
Insert: "not"
Following: "evidence"
Strike: "only for purposes of impeachment"

11. Page 200, line 13.
Following: "~~conviction~~"
Insert: "within 5 years of the date of the conviction"

12. Page 222, lines 15 through 18 and lines 21 through 23.
Strike: "72," through "224"
Insert: "71, 72, 75, 76, 85, 96, 97, 104, 106, 107, 111, 124 through 129, 134, 135, 142, 153, 170, 175 through 177, 181, 199, 200, 204, 212, and 221 through 223"

Signed: Richard Pinsoneault
Richard Pinsoneault, Chairman

2-4/91
Amd. Coord.

2-5-91
Sec. of Senate

2-4-91
SB51

Amendments to Senate Bill No. 51
First Reading Copy (White)

For the Committee on Judiciary

Prepared by Valencia Lane
February 2, 1991

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Following: "~~a~~"
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Insert: "within 5 years of the date of the conviction"

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Strike: "72," through "224"
Insert: "71, 72, 75, 76, 85, 96, 97, 104, 106, 107, 111, 124 through 129, 134, 135, 142, 153, 170, 175 through 177, 181, 199, 200, 204, 212, and 221 through 223"

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 4 Feb 91 Bill No. SB 51 Time 11:30 am

NAME	YES	NO
Sen. Brown		✓
Sen. Crippen	✓	
Sen. Doherty	✓	
Sen. Grosfield	✓	
Sen. Halligan		✓
Sen. Harp		
Sen. Mazurek		✓
Sen. Rye		✓
Sen. Svrcek	✓	
Sen. Towe	✓	
Sen. Yellowtail		✓
Sen. Pinsoneault		✓
	5	6

Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion: Towe - move amend - motion failed

SF-3 (Rev. 1987)

Those costs would be at least $347,000 a year and an unknown amount of medical care that the Department would have to pay. The department has no appropriation to cover those costs. He gave the committee an amendment that he discussed with Sen. Yellowtail. **EXHIBIT 7.** He felt that Sen. Yellowtail was in support of the amendment proposed by the Department of Institutions.

Mick Robinson, Central Services Administrator - Department of Justice, stated that the Department of Justice has some administrative problems with the language regarding the payment to the detention centers. He stated that he had a proposed amendment that he handed out to the committee. **EXHIBIT 8.** He stated that the Department does not have any leverage in coming up with an agreed upon cost and the Department ends up paying the amount requested by the detention center. He felt if that was the intent the department would go along with it, but had no negotiating power. The amendment would include a dollar amount as the amount to be paid with an inflation clause connected with that so the amount does not stay stagnant.

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor:

SEN. YELLOWTAIL stated that he would not have any problem with the amendments proposed by the Department of Institution. He felt that the amendment from the Department of Justice would lock in a specific figure and he was not comfortable with that amendment.

HEARING ON SB 51

Presentation and Opening Statement by Sponsor:

SEN. VAN VALKENBURG, SENATE DISTRICT 30, stated that SB 51 is a bill that many of the committee members have seen before. It is a product of 6 years of work by the Criminal Procedure Commission that was created in 1985 and has been working at revising the Montana Criminal Procedure Law at that time. He stated that it was the Criminal Procedure Commission's intention that the product would be adopted in rule fashion by the Montana Supreme Court. This bill is now being resubmitted in this session and the bill has the support of everyone who works in the Criminal Justice System in the state of Montana. He felt there would be some amendments proposed that will be mostly technical amendments. This is a bill that modernizes and recognizes changes in case law that has occurred over the past 25 years since Montana's Criminal Procedure Code was last revised and put into statute many of the common practices that occur in the

criminal arena in the state of Montana.

Proponents' Testimony:

Robert Deschamps III, Montana Criminal Procedure Committee, stated that this was bill was a long project and took a great amount of effort and time. The committee discovered there were many things on the codes that have been in the books forever. He stated that there has been a whole layer of court cases, both federal and state, that have mandated procedural rules over the last 20 years. There are many procedural rules that have been made by court ruling that don't exist in statute. The committee decided their objective would be to stream line, unify and consolidate the rules for the state of Montana. He stated that they covered most everything that relates to criminal procedure down to sentencing. The committee did not touch the sentencing statutes or the ones that deal with probation or parole.

Mr. Deschamps stated that most of what the committee did really didn't change anything. The committee streamlined and codified the rules. Most of the bill is existing law. "I think we have a good product and ask you to adopt the bill."

John Conner, Montana County Attorney's Association, Montana Criminal Procedure Committee, stated that he is in support of the bill and would be available for questions during executive session.

Michael Sherwood, Montana Criminal Procedure Committee, stated that he is in support of the bill and handed out some amendments for the committee. He gave a short summary of each amendment. EXHIBIT 9

Opponents' Testimony: NONE

Questions From Committee Members:

REP. MEASURE asked Mr. Deschamps if he would go through the 4 or 5 specific instances where the law changes throughout the bill? Mr. Deschamps stated that the road block provision is in existing law, is several sections long and has a mechanical process for some of the regulations that the police officer has to follow when setting up a road block. The provision that the committee proposed allowed road blocks under certain types of provisions and gave it to the commanding authorities the responsibility of establishing the rules and regulations. He stated that the amendment that occurred in the Senate was because of the concern of the Sheriff's and Peace Officers who felt the provisions didn't clearly elaborate when they could stop someone that was a clean suspect.

REP. MEASURE asked Mr. Deschamps why they added vehicle registration and insurance to a regular stop and check for highway patrol officers? Mr. Deschamps stated that was one of

the things that is already done by highway patrol officers.

REP. MEASURE asked Mr. Deschamps if he could explain arrest by citizens in the bill? Mr. Deschamps stated that when a private person wants to make an arrest he has to see the crime committed in his presence or, if a felony, has to believe that a felony has been committed and then he is entitled to arrest.

REP. MEASURE asked Mr. Sherwood to explain searches and seizures in the bill? Mr. Sherwood stated that the primary page of search and seizure the committee took out a lot of the language that was adopted in the early 70's because the search and seizure law had changed radically since then. He felt there was a conflict between the statute as it exists and current United States Supreme Court search and seizure law.

REP. MEASURE if Mr. Sherwood if trial de novo is absent in Municipal or Justice Court? Mr. Sherwood stated that it will strict trial de novo in Municipal Court.

REP. WHALEN asked Mr. Sherwood what changes have been made to the current state statutes that forbids an arrest for a misdemeanor from a person's home at night? Mr. Sherwood stated that a person can still not be arrested at night as a general rule. The committee deleted some language that had been placed in the current statutes and the language addressed domestic violence. This bill does not change the law as it currently sits and does not change the one exception to that which is when there is domestic violence.

Closing by Sponsor:

SEN. VAN VALKENBURG stated that he had no objection to the committee taking its time with this bill but it has been available to all members of the bar, in Montana, since 1988. "I would hope you would give this your favorable consideration."

HEARING ON HB 752
SUMMARY MARRIAGE DISSOLUTION PROCEDURE ESTABLISHED

Presentation and Opening Statement by Sponsor:

REP. TOOLE, HOUSE DISTRICT 60, stated that this bill addresses a situation where people seeking a divorce, with very simple circumstances, are either forced to pay an attorney for services that only marginally needed, or do their own divorce with very little guidance. HB 752 is an effort to address that problem by establishing a procedure in the law that enables people, who have very simple or no disputes, to handle their own divorce without the existence of council. He states the bill provides for a summary dissolution process for people file divorce petitions jointly in court and do not have any children arising out of their marriage, who don't hold any real estate and have very

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 3-8-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	EXCUSED		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

EXHIBIT 1
DATE 2-8-91
SB 51

Proposed Amendments to SB 51
Michael J. Sherwood
Member of the State Bar Commission on Criminal Procedure

1. At Page 10, line 18, after "before",

INSERT: "before the first witness is sworn at the time of"

Reasoning: It may happen that a defendant wishes to object to the trial taking place in a particular jurisdiction because the jury panel has been prejudiced by publicity. This may not become apparent until the panel has been interviewed. This process takes place at the beginning of a trial. Witnesses are sworn only after a jury has been selected from the panel.

2. At page 25, line 7, after "state",

INSERT: "except that a warrant for the violation of a city ordinance may not be acted upon unless the person is located within the city limits where the violation is alleged to have occurred"

Reasoning: This makes Section 28 consistent with Section 30 at page 27, lines 10 through 13.

3. At page 49, line 22, after "counsel",

INSERT: "or that has jurisdiction over the criminal cause"

Reasoning: Oftentimes counsel is initially appointed by a J.P. even though the case is a felony. It might very well be that counsel will seek to be relieved from an appointment by the District Court or Supreme Court.

4. At page 52, line 4, after "in",

STRIKE: "is not in contumacious default in the"
and
INSERT: "has refused or failed, when able, to make"

Reasoning: "Contumacious" is a big word, even for lawyers.

5. At page 67, line 11,

STRIKE: "$500"
and
INSERT: "$1,000"

Reasoning: Often a bail will be set on a second or third-time DUI or other misdemeanor offense which exceeds $500.

Ex. 9
3-8-91
SB 51

6. At page 77, line 23, after "issue",

INSERT: "a summons or"

Reasoning: This makes Section 96 consistent with Section 29.

7. At page 99, line 15, after "a",

STRIKE: "verdict is returned"
and
INSERT: "judgment as to guilt or innocence is reached"

Reasoning: Juries return verdicts, judges reach judgments.

8. At page 126, line 12, after "district",

INSERT: "OR MUNICIPAL"

Reasoning: HB 69 now limits trial de novo in an appeal from municipal court. A party that wishes to have a witness granted immunity for purposes of trial may only get that opportunity at the municipal court level.

9. At page 126, line 20, after "evidence",

INSERT: "OR ANY INFORMATION DIRECTLY OR INDIRECTLY DERIVED FROM SUCH TESTIMONY OR EVIDENCE"

Reasoning: This language was inadvertently deleted from the code.

10. At page 127, line 10,

STRIKE: "felony"
and, after "cases",
INSERT: "PENDING IN DISTRICT OR MUNICIPAL COURT"

Reasoning: HB 69 has now restricted trial de novo in municipal court cases. The reasoning was to eliminate using the municipal court trial as a discovery tool. This is fine so long as meaningful pre-trial discovery is available in municipal court.

11. At page 159, line 19,

INSERT: "(3) ~~AN ORDER FOR THE~~ DISMISSAL OF ~~AN~~ ACTION AS PROVIDED IN ~~THIS~~ CHAPTER ~~IS A BAR~~ TO ANY OTHER ~~PROSECUTION FOR THE~~ SAME OFFENSE ~~IF IT IS A MISDEMEANOR, BUT IT IS NOT A BAR IF THE OFFENSE IS A FELONY.~~"

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. SB #51

DATE 3-8-91 SPONSOR(S) Sen. Von Valkenberg

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
R.L. Deschamps III	Montana Criminal Freedom Common.	SB 51		✓
Michael Sherwood	" "			✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

was instituted in 1969 and reviewed and revised in 1987 but the definition of incapacity was not changed at that time. He asked the law school what removal of "advanced age" would do and he got the response that age is not a function change it is a cosmetic change, but is used in the court as a criteria. He said a new set of codes would be coming out in two or three years at the law school and that is when it should be changed. **Rep. Measure** stated that he would like to see the bill tabled but he would leave it up to the committee.

Vote: Motion carried.

Discussion:

REP. JOHNSON asked **REP. MEASURE** if the committee leaves the bill as is and takes "advanced age" completely out, what does it do to make it effective immediately and the change you suggested Professor Eck wanted to make? **REP. MEASURE** stated that it doesn't do anything with the change. He stated that if the committee takes "advanced age" out of the bill, it leaves the state limits one less tool that has been used in measuring incapacity.

CHAIRMAN STRIZICH stated that removing "advanced age" detracts from the bill and leaves it very open.

REP. NELSON stated that a person can be incapacitated at an "advanced age" and would be a more comfortable phrase to say that gramma is incapacitated because of old age rather than saying she had a mental illness. She felt she didn't find is as derogatory as some of the other members of the committee.

REP. STICKNEY stated that "advanced age" is a clean-up type of wording that would not show discrimination.

Motion/Vote: **REP. JOHNSON MOVED HB 903 DO PASS.** Motion carried 16 to 4 with Rep's: Wyatt, Whalen, Nelson and Measure voting no.

EXECUTIVE ACTION ON SB 51

Motion: **REP. GOULD MOVED SB 51 DO BE CONCURRED IN.**

Discussion:

REP. WHALEN state that he had some concerns about being in a position to address the bill because of its size. He stated that he consulted with some Criminal Defense Lawyers and one stated that it was an excellent bill and there were many good things in it, except for section 138. **REP. WHALEN** stated that he had John MacMaster draft an amendment for the committee.

Motion: **REP. WHALEN** moved to amend SB 51.

CHAIRMAN STRIZICH stated that before the committee goes any further he would like the committee to deal with issue raised by Mr. MacMaster on 618 and that the committee can choose to do nothing with this bill and, if so, the amendments that the committee passed on 618 will be placed into the law. He stated if the committee prefers what is in SB 51 then there need to be a coordination amendment.

Motion: **REP. MEASURE MADE A SUBSTITUTE MOTION TO MOVE THE COORDINATION OF SB 51.**

Discussion:

John MacMaster stated that HB 618 and SB 51 both amend 46-17-311. Each bill clarifies that section. He stated that the committee can adopt either version as far as the clarification because they both clarify the same thing. He stated that the committee cannot adopt both of them. In addition, HB 618 has some provisions saying "on appeal from a Justice Court, City Court or District court, the JP or City Court may be compelled by the District Court to transmit the record and maybe fined for neglect of not transmitting the records. He stated that the last provision is in HB 618 but not SB 51. "If the committee likes that provision then you should leave HB 618 alone and say SB 51 amendment section void and that would allow the clarification to the section in HB 618. He stated that if the committee doesn't like the provision about the judges, then the committee would say, in a coordination instruction in SB 51, that HB 618 is void.

REP. MEASURE asked **John MacMaster** what the past provisions were?

John MacMaster stated that "within 30 days after the appeal is filed, the entire record of the Justice or City Court proceedings must be transferred to the District Court. It is the duty of the defendant to prefect the appeal."

REP. MEASURE stated that there is an incentive either way for the Judges to do what they are supposed to do.

REP. BOHARSKI asked what happens when the records are transferred to another court for an appeal? Who is responsible for that?

John MacMaster stated that under the section that is being talked about is an appeal from the JP Court or City Court to the District Court and it is the lower courts responsibility to transfer the files.

Vote: Motion carried unanimously.

Discussion:

REP. WHALEN asked **John MacMaster** to explain his draft amendment to the committee.

John MacMaster stated that the amendment is on page 120 of SB 51 and the section begins on page 118, line 14. He stated that the bill is amending a section of the code that states which things the defendant in a criminal case has to disclose to the prosecution. The bill states "within 10 days after receiving the recorded examination". He stated that this section talks about a psychiatric examine the defendant has on himself, if the defendant chooses to have the examine, after he gets the report from whoever did it, the defendant has 10 days to provide the prosecutor with written notice of his intent to introduce at the trial of the defense that due to a mental disease or defect the defendant did not have the particular state of mind that is essential on the defense. John MacMaster stated that the defendant may introduce the evidence of the examine in court or he may not. "Rep. Whalen's amendment in on page 120, lines 9 - 12, the underlined language be deleted." **Mr. MacMaster** stated that the underlined language says within 10 days after the defendant receives from his psychiatrist his examine report, he has to give notice that he might use the examine before the trial and he has to include with the notice all written reports and statements which were made during the examine, even though he may not use those at the trial. He stated that the effect of taking the underlined language out is that the prosecutor would not get these reports and examine results unless and until the defendant brings them up at trial and introduces it as evidence.

REP. WHALEN stated that the amendment makes a lot of sense because it is privileged communication between the client and psychiatrist and there are some 5th consideration amendment as far as incriminating yourself until such time as the introduction of the evidence itself.

REP. BECKER asked if the amendment means that the defendant would still have to tell them you are going to examine reports in court?

REP. WHALEN stated that it will be required for the defense to tell the prosecution what the defense is going to do at the time of the trial.

Vote: Motion carried.

Discussion:

REP. WHALEN stated that there were some amendments offered by Michael Sherwood, Montana Trial Lawyers Association, and the majority of them are clean-up language.

Motion: **REP. WHALEN** moved to amend SB 51 with the amendments provided by Michael Sherwood. EXHIBIT I

Discussion:

John MacMaster stated that he talked with Mr. Sherwood, Greg Petesh, and Rep. Van Valkenburg about the proposed amendments and that they all agree that they mostly clarify things. He stated that amendments 8 and 10 allow discovery in lower courts.

Vote: Motion carried.

Discussion:

CHAIRMAN BILL STRIZICH asked John MacMaster to clarify something on the last amendment.

John MacMaster stated that on page 126, line 17, in the section where a person can compel a person's testimony if you give them immunity. "If a person is required to give testimony or produce evidence connected with this section, then any investigation or proceeding compelled testimony for evidence may not be used against the witness in any criminal procedure." He stated that amendment 9 of the Sherwood amendments put back in the language that is struck on lines 20 and 21 and the effect is if a person is forced to testify, you cannot in later criminal proceedings, use his compelled testimony or evidence or can he use any information directly or indirectly to arrive at compelled testimony of evidence.

Motion: REP. WHALEN MOVED TO RECONSIDER AMENDMENT NUMBER 9 OF THE SHERWOOD AMENDMENTS.

Discussion:

REP. WHALEN stated that the committee should vote separately on this amendment.

Vote: Motion failed.

Discussion:

REP. WHALEN stated that he had an amendment that he would like John MacMaster to explain to the committee.

John MacMaster stated that on page 135, line 7, in the section that says "whether psychiatric report of the defendant for an examine request by the defense or the prosecution, the report of the examine must include the following", there is a long list of things the examine must include. He stated that the night circuit court says that with respect to an examine the defendant requests so that it is the defendants examine and the defendants report. He stated that the committee cannot constitutionally force the defendant to have himself examined on all of these things and include them into the report and that is what this section of the bill does. "I suggest that on line 7, page 135, strike "must" and insert "may"."

Motion/Vote: REP. WHALEN moved to amend SB 51 with the amendment explained by John MacMaster. Motion carried.

Discussion:

John MacMaster stated that there are two sections to title 46 that are repealed by SB 331 and amended by SB 51. SB 331 is the County Coroner's bill that generally revises the County Coroner's Law. He stated that he looked at the 2 sections of SB 331 that repeal and the amendments made in SB 51 and he concluded that the committee could a coordination instruction in SB 331 saying that "if SB 51 is passed the amendments to those sections are void".

Motion/Vote: REP. WHALEN moved to amend SB 51 with the amendment explained by John MacMaster. Motion carried.

Discussion:

John MacMaster stated that section 46-4-101 in is clarified in SB 51 and SB 331 has the same type of clarifications but it does some extra things also. He suggested that the committee put a coordination instruction in SB 331 that voids the same section that SB 51 amends.

Motion: REP. LEE moved to amend SB 51 with the coordination amendment explained by John MacMaster. Motion carried.

Discussion:

John MacMaster stated that SB 51 and SB 331 both amend section 46-4-103. Subsection 1 in SB 51 is a very minor change by substitution the word "coroner" for the word "he". Subsection 2 is amended in SB 51 and is deleted in SB 331. He stated that the deleted language is reinstated in SB 331 in one of its new sections. He stated that the main difference between the bills is that SB 331 has a new subsection that SB 51 doesn't. He felt the committee should look at SB 331 and read the new subsection to see if it is acceptable and coordinate the two bills accordingly.

Motion/Vote: REP. GOULD moved to amend SB 51 with a coordination instruction saying if SB 331 is passed and approved, section of 11 of SB 51 is void. Motion carried.

Discussion:

John MacMaster stated that 46-4-201, the definition of inquest, is deleted in SB 51 and is kept in SB 331. He felt that the committee should keep the definition of "inquest" in the bill.

Motion/Vote: REP. GOULD moved to amend SB 51 with the recommendation by John MacMaster to keep the definition of "inquest" in SB 51. Motion carried.

Discussion:

John MacMaster stated that under the current law on the death of a person in a jail or penal institution or in usage of a firearm, the county attorney shall request the coroner is do an inquest. He stated that on page 15, line 13, in SB 51, it changes that provision to say, "if a death is caused by a police officer" which would mean an inquest would be requested whether or not a firearm was used in the death. He stated that this amendment isn't in SB 331 and the committee should decide if they want to make that change.

Motion: REP. LEE moved to amend SB 51 with a coordination instruction putting that language in SB 331.

Discussion:

John MacMaster stated that if SB 51 passes that will be okay but if it doesn't pass that language won't be put in SB 331. He stated that the coordination instruction should be put in SB 331.

REP. LEE WITHDREW HIS MOTION

REP. MEASURE stated that there are some additional provisions in section 14 of SB 331 that he didn't like.

Motion: REP. MEASURE moved to amend SB 51 to incorporate new subsection 4 of SB 331 in SB 51 and delete the other language in SB 331 if SB 51 passes.

Discussion:

REP. MEASURE stated that the provision that he is referring to specifically is on page 12 of SB 331, section 14, lines 20 through 23 that are not in SB 51. He stated that it has to do with a message that says consent of the family is not required for an autopsy required by the County Coroner. He stated that the reason for his objection is that people are often times involved very thoroughly in the objection of an autopsy. He stated that requesting an autopsy is a matter of law already. He stated that he doesn't want to participate in passing a law that violates the First Amendment.

Vote: Motion carried 19 to 1 with Rep. Gould voting no.

Motion/Vote: REP. LEE MOVED SB 51 DO BE CONCURRED IN AS AMENDED. Motion carried 18 to 2 with Rep's: Wyatt and Brown voting no.

EXECUTIVE ACTION ON SB 331

Motion: REP. RICE MOVED SB 331 DO BE CONCURRED IN.

Discussion:

John MacMaster stated that SB 331 and SB 51 amend 46-4-201. He stated that SB 51 on page 15, line 13 is where the current law says that the coroner has to hold an inquest of an inmate in jail is killed by the use of a firearm used by a peace officer. SB 51 amends that section to say "if an inmates death is caused by a peace officer in any way, then an inquest must be held".

Motion/Vote: **REP. LEE** moved to amend SB 331 with the amendment described by John MacMaster. Motion carried.

Discussion:

John MacMaster stated that on page 16 of SB 51 in the same section, on lines 5 and 6 there is an amendment that is not in SB 331. He stated that a coroner who also serves as a peace officer cannot conduct an inquest in certain cases and in those cases the county attorney has to request a qualified coroner from a neighboring town to come and do the inquest. He stated that in SB 51 it is stated that when the neighboring county coroner comes in and does the inquest his expenses has to be paid by the county that requests that he come in. He explained that the current law says the neighboring coroner's expenses and salary must be paid by the county that requests he come in. Mr. MacMaster stated that the committee must decide whether they want "and salary" included in SB 331.

John MacMaster stated that 46-4-202 is the next section needing an amendment. He stated there are two different conflicts the committee is going to have to decide on. When there is an inquest there is a jury. He explained that under the current law the jury is composed of not more than 9 persons. SB 51 changes that to say it has to be at least 3 but not more than 9. SB 331 changes that to say it has to be at least 6 but not more than 12. He stated that the committee can leave it at current law of 9 or choose one of the amendments in the two bills.

REP. DARKO stated that the committee has had coroner's bill in the committee before and this bill was worked on very hard and she felt the committee should be careful about eliminating language in SB 331.

Motion: **REP. BROOKE** moved to amend SB 331 by accepting language in SB 51, a jury of not less than three but not more than nine.

Discussion:

REP. BROOKE stated she felt that three to nine was a sufficient number of people to do the job that is needed to be done.

REP. RICE stated that he was concerned that the cases have six people when they are determining whether or not someone has died by a criminal means. He stated that it was such a significant

decision, he felt more comfortable with having at least six people on the jury. He stated that the state mandates six people for a traffic ticket and a such a critical decision such as this should have a mandated jury of six people.

Vote: Motion failed 1 to 19 with Rep. Brooke voting yes.

Discussion: John MacMaster stated that on page 16 of SB 51 in the same section, puts in a new subsection as follows: "The jurors may be required to inspect the body of the deceased whether or not an autopsy has been performed at the discretion of the county attorney." He stated that provision is in SB 51 but not SB 331 and if the committee decides to adopt that provision the coordination instruction would be to strike section 14 of SB 51 after adding the new subsection to SB 331.

Motion: REP. LEE moved to amend SB 331 with the coordination instruction explained by John MacMaster.

Discussion:

REP. RICE asked if there is a prohibition against the coroners jury inspecting the body in the present law?

John MacMaster stated that it gets into another section of the bill that needs to have a coordination instruction. He stated that on page 17 of SB 51, page 17, line 20 is amended to say "after instruction body if required". He stated that it clarifies that they are going to instruct the body if it is required by the County Attorney.

REP. RICE stated that SB 51 makes inspection of the body permissive and SB 331 makes inspection of the death scene only by video tape, photographs or slides. He felt that it was an unnecessary restriction.

John MacMaster stated that committee could adopt the SB 331 version of 46-2-205 and adopt SB 51 new subsection saying the county attorney can require that it be inspected.

Motion/Vote: REP. RICE MADE A SUBSTITUTE MOTION to amend SB 331 by adopting the language out of SB 51 allowing the inspection of the body be permissive. Motion carried.

Motion/Vote: REP. RICE moved to amend SB 331 by putting in the requirement that the jury view the death scene and put a sentence at the end "The requirement may be satisfied by video tape, photographs, and slides transparencies, in addition." Motion carried.

Motion: REP. MEASURE moved to amend SB 331 on page 12, line 20, through the word " " on line 23, and delete the underlined language.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 3-19-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. DAVE BROWN	✓		
REP. ROBERT CLARK	✓		
REP. PAULA DARKO	✓		
REP. BUDD GOULD	✓		
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER			✓
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON	✓		
REP. JIM RICE	✓		
REP. ANGELA RUSSELL			✓
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓		
REP. TIM WHALEN	✓		
REP. DIANA WYATT	✓		
REP. BILL STRIZICH, CHAIRMAN	✓		

3/26/91 8:55 am BOA

HOUSE STANDING COMMITTEE REPORT

March 26, 1991

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 51 (third reading copy -- blue) be concurred in as amended.

Signed: _____
Bill Strizich, Chairman

Carried by: Rep. Toole

And, that such amendments read:

1. Page 10, line 18.
Following: "before"
Insert: "the first witness is sworn at the time of"

2. Page 25, line 7.
Following: "state"
Insert: ", except that a warrant for violation of a city ordinance may not be acted upon unless the person is located within the limits of the city in which the violation is alleged to have occurred"

3. Page 49, line 22.
Following: "counsel"
Insert: "or that has jurisdiction over the case"

4. Page 52, line 4.
Strike: "not in contumacious default in the payment"
Following: "~~thereof~~"
Strike: "of"
Insert: "able to but refuses or fails to pay"

5. Page 67, line 11.
Strike: "$500"
Insert: "$1,000"

6. Page 77, line 23.
Following: "issue"
Insert: "a summons or"

7. Page 99, line 15.
Strike: "verdict is returned"
Insert: "judgment as to guilt or innocence is reached"

8. Page 103.
Following: line 11
Insert: "(6) An affidavit filed in support of a motion for leave to file a charge or warrant must be sealed unless the judge determines that disclosure of the information in the affidavit is required to protect the health, safety, or welfare of the public."

9. Page 120, lines 9 through 12.
Strike: ", together" on line 9 through "comparisons" on line 12

10. Page 126, line 12.
Following: "district"
Insert: "or municipal"

11. Page 126, line 21.
Following: "~~evidence~~"
Insert: "and any information directly or indirectly derived from such testimony or evidence"

12. Page 127, line 10.
Strike: "felony"
Insert: "district or municipal court"

13. Page 135, line 10.
Strike: "must"
Insert: "may"

14. Page 223.
Following: line 18
Insert: "NEW SECTION. Section 265. Coordination instruction.
(1) If House Bill No. 618 is passed and approved and if it includes a section that amends 46-17-311, then that section of House Bill No. 618 is void.
(2) If Senate Bill No. 331 is passed and approved and it repeals 46-4-102 and 46-4-204, then the sections of [this act] that amend sections 46-4-102 and 46-4-204 are void.
(3) If Senate Bill No. 331 is passed and approved and if it includes a section that amends 46-4-101, then the section of [this act] that amends 46-4-101 is void.
(4) If Senate Bill No. 331 is passed and approved and if it includes a section that amends 46-4-103, then the section of [this act] that amends 46-4-103 is void."

DATE 2-19-91
SB 51

Proposed Amendments to SB 51
Michael J. Sherwood
Member of the State Bar Commission on Criminal Procedure

1. At Page 10, line 18, after "before",

INSERT: "before the first witness is sworn at the time of"

Reasoning: It may happen that a defendant wishes to object to the trial taking place in a particular jurisdiction because the jury panel has been prejudiced by publicity. This may not become apparent until the panel has been interviewed. This process takes place at the beginning of a trial. Witnesses are sworn only after a jury has been selected from the panel.

2. At page 25, line 7, after "state",

INSERT: "except that a warrant for the violation of a city ordinance may not be acted upon unless the person is located within the city limits where the violation is alleged to have occurred"

Reasoning: This makes Section 28 consistent with Section 30 at page 27, lines 10 through 13.

3. At page 49, line 22, after "counsel",

INSERT: "or that has jurisdiction over the criminal cause"

Reasoning: Oftentimes counsel is initially appointed by a J.P. even though the case is a felony. It might very well be that counsel will seek to be relieved from an appointment by the District Court or Supreme Court.

4. At page 52, line 4, after "in",

STRIKE: "is not in contumacious default in the"
and
INSERT: "has refused or failed, when able, to make"

Reasoning: "Contumacious" is a big word, even for lawyers.

5. At page 67, line 11,

STRIKE: "$500"
and
INSERT: "$1,000"

Reasoning: Often a bail will be set on a second or third-time DUI or other misdemeanor offense which exceeds $500.